

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20988
[Redacted]. and [Redacted])	
Petitioner.)	DECISION
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On March 18, 2005, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] [Redacted] (taxpayer) proposing sales and use tax, penalty, and interest for the period of August 1, 1999, through July 31, 2002, in the total amount of \$8,898,615. That amount was later decreased to \$138,091.

On May 20, 2005, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on June 24, 2008.

[Redacted]. The taxpayer provided a general journal but other records were lacking. The auditor scheduled all of the purchases of consumable items and imposed use tax on them because the taxpayer was unable to provide invoices showing tax paid to the vendor. Also, the auditor found a difference between the sales tax collected and the amount remitted. This difference could not be reconciled.

Idaho Code § 63-3621 imposes a use tax on tangible personal property stored or used in Idaho. The use tax liability is extinguished if the purchaser pays sales tax to the seller at the time of purchase. The taxpayer did not pay any use tax during the audit period. Subsection § 63-3621(a) states, in relevant part:

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His

liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers....

The taxpayer was able to provide some of the required records after the Commission issued the NOD. Because of this, the amount of the deficiency was decreased substantially. The main issue, however, remains the lack of documentation. Taxpayers are required to keep adequate records. Idaho Code § 63-3624(c) states:

(c) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction.

In addition, Idaho sales tax Rule 111.01 (IDAPA 35.01.02.111.01) states:

01. In General. Every retailer doing business in this state and every purchaser storing, using, or otherwise consuming in this state tangible personal property shall keep complete and adequate records as may be necessary for the State Tax Commission to determine the amount of sales and use tax for which that person is liable under Title 63, Chapter 36, Idaho Code.

Idaho sales tax Rule 111.06 (IDAPA 35.01.02.111.06) goes on to state:

06. Failure of the Taxpayer to Maintain or Disclose Complete and Adequate Records. Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the State Tax Commission shall:(3-30-01)

a. Impose any penalty as may be authorized by law.
(7-1-93)

b. Subpoena attendance of the taxpayer and any other witness when the State Tax Commission deems it necessary or expedient for examination and compel the taxpayer and witness to

produce any documents within the scope of its inquiry relating in any manner to the sales and use tax. (3-30-01)

c. Enter such other order as may be necessary to obtain compliance with this rule in the future by any taxpayer found not to be in substantial compliance with the requirements of this rule. (7-1-93)

The taxpayer provided some documentation on a few of the purchases after the informal hearing. The Commission has adjusted the deficiency amount accordingly. Other than that, the taxpayer has provided no further evidence to show that the Notice of Deficiency Determination is incorrect.

WHEREFORE, the Notice of Deficiency Determinations dated March 18, 2005, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>SALES AND USE TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$92,103	\$4,606	\$42,464	\$139,173

Interest is calculated through October 31, 2008, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer’s right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

Receipt No.