

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20990
[Redacted])	
Petitioner.)	DECISION
)	
)	
)	

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] (taxpayer) proposing sales and use tax, penalty, and interest for the period of October 1, 2001, through June 30, 2004, in the total amount of \$1,088,020. That amount was later decreased to \$210,483. In addition, the Commission issued a Notice of Deficiency Determination proposing a travel and convention tax, penalty, and interest in the amount of \$2,892. That amount was later increased to \$3,346.

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.

The taxpayer operates a hotel and golf course in [Redacted].

The taxpayer raised three issues in its protest letter. First, the taxpayer argued that golf club memberships are not taxable. Second, the taxpayer objected to the sampling and projection method that the auditor used to calculate the use tax liability for expensed items. Third, the taxpayer's attorney stated that the taxpayer would provide invoices showing that it had paid sales tax on many of the fixed asset purchases held as taxable.

Golf Memberships

The Commission has addressed the issue of golf club memberships before. The Idaho Supreme Court ruled that private golf club membership fees are taxable in *Crane Creek Country*

Club v. Idaho State Tax Commission, 122 Idaho, 880, 841 P.2d 410 (1992). Also see the Commission's administrative decisions Docket Number 20425 (2008 WL 1995289) and Docket Number 16791 (2003 WL 25467452).

Projection of Expensed Items

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is due unless the purchaser pays sales tax to the seller at the time of sale. Subsection 63-3621(a) states that the use tax liability is extinguished if the buyer can produce a receipt from the seller showing that sales tax has been paid. Lack of adequate records was a problem in this case. The taxpayer was unable to provide account totals for the audit period, so it was not possible to use a random sample and a projection based on a percentage of error. The auditor reviewed the best information available and made an estimate of the tax liability. The taxpayer has not shown that the estimate is incorrect.

Fixed Asset Purchases

The auditor imposed use tax on several purchases of fixed assets for which the taxpayer had no purchase invoices. Idaho Code § 63-3624 and Idaho sales tax Rule 111.01 (IDAPA 35.01.02.011) require taxpayers to keep adequate records. The taxpayer was able to provide some further documentation after the hearing. The deficiency amount has been modified accordingly.

WHEREFORE, the Notice of Deficiency Determination dated March 18, 2005, are MODIFIED, and as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$129,498	\$6,475	\$46,570	\$182,543
<u>TRAVEL AND CONVENTION TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,551	\$128	\$716	\$3,395

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.
