

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21007
[Redacted])	
Petitioner.)	DECISION
)	
)	
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On January 4, 2008, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination to [Redacted](taxpayer) proposing sales and use tax, and interest for the period of September 1, 2004, through August 31, 2007, denying a refund claim in the total amount of \$9,288.64.

On February 25, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on June 19, 2008.

At issue are several purchases [Redacted]. [Redacted] is registered to collect Idaho sales tax and did in fact collect and remit sales tax on the sales. A [Redacted] consultant hired by the taxpayer originally requested a refund of the tax [Redacted]. When [Redacted] declined to pay the refund, the consultant claimed a refund from the Commission under Idaho Code § 63-3626 and sales tax Rule 117 (IDAPA 35.01.02.017).

The basis for the consultant’s claim for refund was that the majority of the [Redacted] users were outside of Idaho. Right refused to pay the refund because the [Redacted] was delivered to the taxpayer’s location[Redacted]. An email [Redacted] stated in part:

[Redacted]

In support of its argument, the taxpayer cites Idaho Code § 63-3621(b) which states:

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use

or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

The taxpayer argues further that the use [Redacted] is exempt under Idaho Code § 63-3615(c):

(c) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state.

It is not disputed that the [Redacted] was delivered to Idaho. The tax is imposed because the sale occurs in Idaho. In a case dealing with a similar issue, the California Court of Appeals upheld a tax imposed on sales of goods to an air freight company. The Court held that California could tax the sales because delivery occurred in California, even though the equipment was

actually used out of state. Quoting the well-known legal scholar Lawrence Tribe, the Court stated:

A state may require a local seller to collect and remit a tax on receipts from *sales made to out-of-state customers* only if the sale itself can be sufficiently connected with the taxing state. *Delivery within the taxing state* can establish such a nexus.” (Tribe, *American Constitutional Law*, § 6-15, p. 348.) If delivery occurs in California the transaction constitutionally may be taxed, regardless of any intent to subsequently ship the goods out of state. (Emphasis in original.) (Citations omitted.) *Satco, Inc. v. State Board of Equalization*, 144 Cal.App.3d 12, 192 Cal.Rptr. 449, (1983).

Idaho Code § 63-3622(b) states that the retailer is required to collect the tax at the time of making the sale. In this case, the sale was taxable at the time it was made. The seller did not know the locations of all the users, but it did know that the software was delivered to [Redacted].

Furthermore, Idaho Code § 63-3615 is not an exemption statute. It provides the definition of “use” and only applies to use tax. It does not apply to sales tax. The [Redacted] was not purchased for use “solely outside the state.” The taxpayer does not deny that many of the [Redacted] users were located in Idaho. The definition of “use” is therefore not applicable.

[Redacted]. [Redacted]. As [Redacted] pointed out in his email, the [Redacted] itself resides on the taxpayer’s computers [Redacted]. This is corroborated by information found on the Web site[Redacted]. The Web site states:

[Redacted]

There is one change that should be made to the refund denial. The taxpayer was charged tax incorrectly on \$1,999 paid for a training class. Sales of training are not taxable under Idaho sales tax Rule 027 (IDAPA 35.01.02.027).

In summary, the [Redacted] was delivered to Idaho and resides in Idaho. It is therefore taxable in Idaho. There is no statutory provision that would allow apportionment of the tax according to the location of the users.

WHEREFORE, the Notice of Taxpayer Initiated Refund Determination dated January 4, 2008, is MODIFIED and as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer should receive a refund of the following tax and interest (calculated through August 15, 2008):

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$100	\$19	\$119

An explanation of the taxpayer's right to appeal this decision is included with this decision.

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]

Receipt No.
