

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 21127
[Redacted],)
) DECISION
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Petitioner.)
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On March 18, 2008, staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted](taxpayer). The Notice proposed additional use tax and interest in the total amount of \$9,936 for the period January 1, 2005, through September 30, 2007. The taxpayer filed a timely appeal and petition for redetermination on April 23, 2008, and the Commission held an informal conference by telephone on June 26, 2008. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the deficiency determination, allowing for some adjustments in the taxpayer’s favor.

DISCUSSION OF FACTS

The taxpayer is a [Redacted]. The auditor concluded that all sales made by the taxpayer were exempt from tax. However, the auditor concluded that there was tax liability for the [Redacted]. Additionally, the auditor held as taxable the use of business assets, as well as personal purchases by the taxpayer, for which no exemption applied. Finally, the auditor held the taxpayer liable for tax on [Redacted] business.

RELEVANT TAX LAW

In Idaho, a retail sale is taxable unless an exemption applies. A sale of goods to a buyer who intends to resell them is not taxable (Idaho Code §§ 63-3609 and 63-3612). If a buyer

withdraws goods from an untaxed resale inventory for a use other than resale, such use is subject to tax (IDAPA 35.01.02.105.06.b). The buyer will owe a use tax directly to the state. The use tax rate is identical to the sales tax rate (Idaho Code § 63-3621).

[Redacted]. (IDAPA 35.01.02.050.)

Further, supplies used for the purpose of providing services are used by the service provider, and thus, it is the service provider who is responsible for sales or use tax on the items. *Weigel v. Commissioner of Revenue*, 566 N.W.2d at 80, 83 (Minn.1997). [Redacted]. By contrast, title does pass in a retail sale (Idaho Code § 63-3612(1)).

The exemption for goods used in the production of items that will be sold at retail is available to separately operated segments of a business that produce tangible personal property intended for retail sale (Idaho Code § 63-3622D). It will be noted later that there are certain restrictions on the availability of the exemption for taxpayers who produce tangible personal property for resale.

PROTEST ISSUES

The taxpayer objects to use tax held on amounts from invoices marked “[Redacted].” [Redacted].

[Redacted].

Finally, the taxpayer objects to asset purchases held taxable, asserting that he paid taxes but cannot prove so because a 2006 flood at his home destroyed many of his records.

ANALYSIS AND CONCLUSIONS

[Redacted].

According to the auditor, the billing documents are not sufficiently available or detailed enough to prove an exemption. A determination of the State Tax Commission is presumed to be correct (*Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 1984), and the burden is on the taxpayer to show that the deficiency is erroneous (*Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 Ct. App. 1986).

[Redacted].

The auditor did take reasonable steps in the review process to the advantage of the taxpayer. Items showing “ship-to” information of ranchers or farmers were not held taxable, even though the taxpayer is required to have exemption certificates on file as proof of exempt sales (Idaho Code § 63-3622(a)). Other such obvious sales to production exempt customers were not held taxable.

[Redacted].

The Commission concludes that the auditor rightly determined that the “separately operated segment of a business” requirement of the tax code has not been met for the purposes of the exemption the taxpayer seeks. Further, an administrative rule requires that a production exempt entity claiming an exemption have an employee or employees whose primary employment responsibility is to operate the business segment (IDAPA 35.01.02.079.2.a). To the Commission’s knowledge, this requirement has not been met.

Undocumented assets are again a matter of fact that the taxpayer cannot easily prove without records. The taxpayer expresses a level of certainty that taxes were paid, but his belief or insistence is not reliable audit evidence.

After the Commission issued the Notice of Deficiency Determination, the auditor made some adjustments in the taxpayer's favor based on documentation and explanations provided by the taxpayer. The Commission approves of these adjustments.

In conclusion, the taxpayer did not provide records adequate to establish that the amount asserted in the Notice of Deficiency Determination, as adjusted, is incorrect. As a result, the Commission will uphold the tax deficiency notice, as adjusted, for the period January 1, 2005 through September 30, 2007.

The Bureau added interest to the use tax deficiency. The Commission reviewed this addition and found it appropriate per Idaho Code § 63-3045. Interest is calculated to February 25, 2009, and continues to accrue until paid.

WHEREFORE, the Notice of Deficiency Determination dated March 18, 2008, is hereby MODIFIED, and as so modified is 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>INTEREST</u>	<u>TOTAL</u>
\$7,284	\$1,229	\$8,513

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]

Receipt No.
