

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 21128
[Redacted])
)
) Petitioner.) DECISION
)
)
)
)
_____)

On February 19, 2008, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted], (taxpayer) proposing sales and use tax, and interest for the period of September 1, 2000, through July 31, 2007, in the total amount of \$189,911. The taxpayer made payment of \$49,559 on January 2, 2008, so the net amount of the NOD was \$140,352.

On April 21, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on August 1, 2008.

[Redacted].

The Sales Tax Act and the sales tax rule both specify that sales of [Redacted] are taxable. Idaho Code § 63-3612 includes within the definition of “sale”:

Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

Transactions that fall within the definition of “sale” are taxable when sold to the consumer. The Commission has consistently held sales of [Redacted] taxable as a sale of processing or fabricating tangible personal property.

[Redacted]The taxpayer argues that it is merely selling a service and not the [Redacted] itself. Since the taxpayer’s [Redacted]. Idaho Code § 63-3609 states, in relevant part:

63-3609. Retail sale. Sale at retail. The terms "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) *All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable* whether or not such persons intend resale of the improved property.... (Emphasis added.)

Since the [Redacted] is used by the general contractor as a building material, it is taxable.

The taxpayer also argues that Subsection 03 of Idaho sales tax Rule 13.03 exempts the use of the [Redacted]. That subsection states:

[Redacted]

This provision does not apply because the taxpayer changes the [Redacted].

Finally, the taxpayer argued in his protest letter that Idaho Code § 63-3621(m) exempts the use of the rock. That statute states:

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state. This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

This statute is inapplicable. The taxpayer in this case was paid for his services and made no donations of material. Also, the auditor did not impose tax on any sales made to state or local government agencies.

WHEREFORE, the Notice of Deficiency Determination dated February 19, 2008, 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>
\$140,352	\$8,134	\$148,486

Interest is calculated through October 3, 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]

Receipt No.
