

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21279
[REDACTED],)	
)	DECISION
Taxpayer.)	
_____)	

On June 18, 2008, 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 and interest for the period of April 1, 2005, through December 31, 2007, in the total amount of \$6,371.

On July 10, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on November 24, 2008.

[Redacted]. The only issue the taxpayer has raised is the imposition of sales tax on sales of [Redacted] services.

The Tax Commission has long held that sales of [Redacted] services are fees for the use of tangible personal property for recreation and are, therefore, included within the definition of “sale” under Idaho Code § 63-3612. The Supreme Court of Tennessee has held that sales of [Redacted] services are taxable for the same reason in *P & P Enterprises v. Celauro*, 733 S.W.2d 878, (1987).

[Redacted], the owner, stated that when she began business, she called the Commission and was informed that she did not have to collect sales tax because she cleaned [Redacted] after each customer [Redacted].

The taxpayer is therefore asserting the defense of equitable estoppel. Equitable estoppel arises:

[w]hen a party makes a false representation or concealment of a material fact with actual or constructive knowledge of the truth; it is made with the intent that it be relied upon; the party asserting estoppel does not know or could not discover the truth; and the party asserting estoppel relies on it to the party's prejudice." *Hecla Min. Co. v. Star-Morning Min. Co.*, 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992); *Allen v. Reynolds*, 145 Idaho 807, 186 P.3d 663, (2008).

The Commission notes that the taxpayer did not rely on written advice, nor can the taxpayer identify the Commission employee who allegedly gave the incorrect advice in a telephone conversation; however, even if one assumes the taxpayer was incorrectly advised not to impose tax on sales of [Redacted] services, there is no precedent in Idaho to support the argument that the Commission can be estopped from asserting a use tax deficiency in this case.

In fact, the Idaho Supreme Court has ruled the opposite:

In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel. (Citations omitted.)

The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax. (Citations omitted.) *State of Idaho v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

The taxpayer, therefore, may not assert estoppel as a defense.

WHEREFORE, the Notice of Deficiency Determination dated June 18, 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>
\$5,780	\$818	\$6,598

Interest is calculated through February 27, 2009, 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 included with this decision.

DATED this ____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
