

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21364
[REDACTED].)	
)	DECISION
Taxpayer.)	
_____)	

On June 30, 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 November 1, 2001, through October 31, 2004, in the total amount of \$163,400.

On July 22, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on January 13, 2009.

The taxpayer operates a linen service. It sells and rents shop towels, uniforms, mops, floor mats, and similar products. During the audit period, the taxpayer added a separately stated “environmental charge” to its regular rental charge. The Commission imposed sales tax on this fee. The environmental charge is the only issue to which the taxpayer objects.

Idaho Code § 63-3613 defines sales price for the purposes of the Idaho Sales Tax Act. The statute states, in relevant part: “The term "sales price" means the total amount for which tangible personal property, *including services agreed to be rendered as a part of the sale*, is sold, rented or leased, valued in money, whether paid in money or otherwise...” (Emphasis added.)

Idaho Sales Tax Rule 043.02 (IDAPA 35.01.02.043.02) adds the following:

02. Services Agreed to be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term “sales price” is defined by Section 63-3613, Idaho Code, to include “services to be rendered as a part of the sale.” The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. This is not intended to be an exclusive list of such items: (3-20-04)

a. *Any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer, including charges for assembly, fabrication, alteration, lubrication, engraving, monogramming, cleaning, or any other servicing, customizing or dealer preparation. (Emphasis added.)* (3-20-04)

b. Any charge based on the amount or frequency of a purchase, such as a small order charge or the nature of the item sold, such as a slow-moving charge for an item not frequently sold. (3-20-04)

c. Any commission or other form of compensation for the services of an agent, consultant, broker, or similar person. (3-20-04)

d. *Any charges for warranties, service agreements, insurance coverage, or other services required by the vendor to be taken as a condition of the sale. If the sale could be consummated without the payment of these charges, the charges are not part of the sales price if separately stated. Also see Rule 049 of these rules. (Emphasis added.)* (3-20-04)

Since the environmental charge is mandatory, it would appear that it should be included in the price subject to tax. On the other hand, Sales Tax Rule 057.02.a. states:

a. Linen supply firms or laundries which furnish such items as sheets, pillowslips, towels, uniforms, diapers, etc., must collect and remit sales tax based on the rental charge. The sales tax will also apply to the rental of shop towels, floor mats for building entrances, dust mops, room deodorizers and any other tangible personal property rented or leased for building maintenance or service. *The entire price charged for such rentals is taxable unless a reasonable charge for cleaning is separately stated.* If the allocation between rental and cleaning fees is unreasonable, the State Tax Commission may deem the entire fee, or any portion thereof, to be taxable. (Emphasis added.) (7-1-98)

The taxpayer states that the environmental charge is billed to recover a portion of all services related to cleaning. Rule 057 states that such a charge is not taxable. Although it appears that Rule 057 contradicts both Rule 043 and Idaho Code § 63-3613, the Commission is not free to disregard its own administrative rule. *Railbox Co. v. Idaho State Tax Commission*. 116 Idaho 909, 782 P.2d 32, (1989). The Commission is therefore reducing the amount of the NOD by the amount of the tax imposed on the environmental charges.

WHEREFORE, the Notice of Deficiency Determination dated June 30, 2008, is 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>INTEREST</u>	<u>TOTAL</u>
\$83,065	\$29,168	\$112,233

Interest is calculated through April 3, 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.

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.
