

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED],) DOCKET NO. 21400
)
) DECISION
Petitioner.)
_____)

On July 31, 2008, the Sales and Use Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting additional sales and use tax and interest totaling \$50,567 for the period of October 1, 2004 through September 30, 2007. The taxpayer protested the Notice of Deficiency Determination on August 19, 2008. The taxpayer requested an informal hearing, which was held on November 10, 2008.

The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the deficiency determination.

The taxpayer operates a [Redacted] business. It also creates [Redacted]. The taxpayer made some untaxed sales that the auditor believed to be taxable. Primarily, however, the liability asserted by the auditor is for the untaxed purchase of operating assets and [Redacted]. Idaho Code § 63-3621 imposes a tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. The tax rate is the same as the sales tax and is imposed on the value of the property. When property is stored, used, or consumed in Idaho, the user owes use tax unless he has paid sales tax on the purchase of the property or an exemption applies.

The taxpayer argues that it sought advice from the Commission’s Taxpayer Service representatives, but it either received incorrect advice, misinterpreted advice given, or believes

that a combination of both occurred. The taxpayer did not submit any documentation from the Commission or any other information to further elaborate on what questions it asked or what advice it received.

When the taxpayer produces tangible personal property for its customers [Redacted] it often provides [Redacted] services related to the finished product. Services that were agreed to be rendered as part of the sale of tangible personal property are subject to tax as part of the final sales price of the property (Idaho Code § 63-3613(a)). Specifically, design fees agreed to be rendered with the [Redacted] of tangible personal property are taxable (IDAPA 35.01.02.055.07).

The taxpayer produced magazine-like publications containing advertisements. It did not sell the publications to the advertisers but agreed to certain free-distribution conditions or requirements. As there was no sale, the taxpayer is considered to be the consumer of the goods used in creating the publications.

There are conditions when there is no liability for tax on the use of tangible personal property consumed in producing [Redacted], but the taxpayer did not meet these conditions. Idaho Code § 63-3622T provides an exemption for purchases of tangible personal property used to produce [Redacted]; however, the exemption does not apply in this case. The exemption states:

63-3622T EQUIPMENT TO PRODUCE CERTAIN NEWSPAPERS. There are exempted from the taxes imposed by this chapter:

(a) Receipts from the sale, storage, use or other consumption in this state of tangible personal property directly used and consumed in the production of publications in a newspaper format which are distributed to the public at large and which rely on advertising revenue as their primary source of income; provided, that the purchase, storage, use or other consumption is by a business or segment of a business which is

primarily devoted to such production of said publications; provided, further, that the use or consumption of such tangible personal property is necessary or essential to the performance of such publication business. This exemption does not include machinery, equipment, materials and supplies used in a manner that is incidental to the production of said publications, such as maintenance and janitorial equipment and supplies and hand tools with a unit price not in excess of one hundred dollars (\$100); nor does it include tangible personal property used in any activities other than the actual production of the publication and shall not include property such as office equipment and supplies, equipment and supplies used in selling and distributing activities, in research or in transportation activities; nor shall this exemption include motor vehicles or aircraft without regard to the use to which such motor vehicles or aircraft are put.

(b) Provided, further, that this exemption shall apply when the publication referred to herein is distributed to the public free of charge.

(c) Provided, further, that in order for the exemption to be applicable, at least ten percent (10%) of the total publication, computed on an average annual column inch basis, must be devoted to the publication of nonincome producing informative material.

The exemption referred to above is commonly called the “[Redacted]” exemption. An administrative rule elaborates on the exemption criteria. In order for the exemption to apply, the [Redacted]. The primary business of the taxpayer claiming the exemption must be producing such [Redacted] (Idaho Code § 63-3622T and IDAPA 35.01.02.127).

The taxpayer became aware of the exemption and discussed it in the course of its protest with the Commission but did not state that it satisfied the necessary requirements for the exemption to apply.

Other exemptions that might apply in the [Redacted] business are enumerated in an administrative rule entitled “Persons Engaged in Advertising” (IDAPA 35.01.02.055), but the taxpayer’s records and business model did not suggest that it was entitled to such exemptions.

Finally, since the primary business of the taxpayer is not producing tangible personal property for resale, it cannot qualify for the production exemption (Idaho Code § 63-3622D).

WHEREFORE, the Notice of Deficiency Determination dated July 31, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$44,096	\$7,961	\$52,057

Interest is computed through May 1, 2009.

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 _____, 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.
