

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21403
[Redacted],)	
)	DECISION
Petitioner.)	
)	
)	
)	

On August 8, 2008, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] dba [Redacted] (taxpayer) asserting amusement device permit fees and penalty totaling \$460 for the period July 1, 2008, through June 30, 2009.

In a letter received September 4, 2008, the taxpayer protested two of the permit (aka decal) fees and the entire penalty portion imposed in the Notice of Deficiency Determination. The Commission sent a hearing rights letter on September 24, 2008, but the taxpayer did not respond.

Having reviewed the audit file, the protest letter, and applicable Idaho statutes, the Commission hereby upholds the Notice of Deficiency Determination, adjusted for the amount already paid, based on the following.

The taxpayer operates [Redacted]. On August 5, 2008, a Bureau auditor observed that [Redacted] contained five amusement devices that did not display current decals. Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee in lieu of sales tax remitted from each device’s revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner or operator’s failure either to apply for the permits on or before July 1 of each year or to display the decals that are evidence the required fees have been paid. The code section is noted below, in pertinent part:

63-3623B. Amusement devices. (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices...

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees...

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code... (Emphasis added.)

The taxpayer argues that two of the five amusement devices, a pool table and video machine, are non-operable and therefore do not require decals. Further, the taxpayer says that his viewpoint on the liability imposed is shared by an employee he spoke with at a Tax Commission field office.

The auditor states that the devices in question were on the floor of the taxpayer's premises and appeared operable during the time of her visit. There is no evidence that anyone in the Commission's field office agreed with the taxpayer in opposition to the auditor's findings.

On August 14, 2008, the taxpayer bought three decals. The taxpayer purchased an additional decal on September 30, 2008, for a total of four decals. Thus, \$168 is subtracted from the original liability.

The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the deficiency notice for the period July 1, 2008, through June 30, 2009.

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).

WHEREFORE, the Notice of Deficiency Determination dated August 8, 2008, is hereby ADJUSTED, APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>		<u>TOTAL</u>
\$210	\$250		\$460
		LESS	(168)
			<u>\$292</u>

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.
