

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21430
[REDACTED],)	
)	DECISION
Taxpayer.)	
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On July 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 March 31, 2008, in the total amount of \$48,031.

On September 18, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on January 20, 2009.

At issue is the imposition of use tax on 50 percent of the [Redacted] purchased by the taxpayer during the audit period. Idaho Code § 63-3621 imposes a use 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 imposed by Idaho Code § 63-3619. Every state that imposes a sales tax has a provision for a use tax. The use tax rate is the same as the sales tax. The use tax is imposed on purchases of goods that are not taxed by the seller.

[Redacted]. The taxpayer purchases [Redacted] from an out-of-state vendor. [Redacted]. According to the taxpayer, 35 percent [Redacted] is cut away during the process [Redacted]. Another 15 percent is broken during the manufacturing process and is discarded.

[Redacted], the owner, stated that when he started the business [Redacted] he called the Commission and asked about use tax. [Redacted] stated that he was told that he owed use tax

only on the value of the amount of materials that he actually installed and that he did not owe use tax on the amount that was cut away or broken. For this reason, the taxpayer paid use tax on only one half of the amount of its [Redacted] purchases.

The taxpayer also relied on a statement in one of the Commission's sales tax brochures. Sales Tax Brochure # 2 titled "Use Tax, An Educational Guide to Sales Tax in the State of Idaho" contains the following statement: "Use tax is a tax on goods that you put to use or store in Idaho..." The taxpayer felt that this statement supported its position.

As stated previously, Idaho Code § 63-3621 imposes a tax on the storage, use, or other consumption of tangible personal property. The tax is imposed on 6 percent of the "value of the property, and a recent sales price shall be presumptive evidence of the value of the property...." In the taxpayer's case, the value was the sales price charged by the vendor, not 50 percent of that sales price. In fact, Sales Tax Brochure # 2 states: *The amount of use tax is based on the fair market value of the item when it first becomes taxable. A recent purchase price of the item is usually its fair market value.* (Emphasis added.) The use [Redacted] became taxable at the time it was delivered to Idaho.

Furthermore, if the taxpayer had purchased [Redacted] from an Idaho vendor, the tax would have been applied to the entire purchase price and not just 50 percent. There is no provision in the Sales Tax Act that allows for a deduction from the sales price for building materials that were used up or discarded in the process of fabricating [Redacted].

The taxpayer has put forth several arguments. Most notably, the taxpayer maintains that the Commission is prevented from asserting use tax by the doctrines of equitable estoppel and quasi-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 advised to calculate the use tax incorrectly, there is no precedent in Idaho to support the argument that the Tax 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 doctrine of quasi-estoppel is somewhat different. Quasi-estoppel “prevents a party from asserting a right, to the detriment of another party, which is inconsistent with a position previously taken.” *Atwood v. Smith*, 143 Idaho 110, 114, 138 P.3d 310, 314 (2006) (quoting *C & G, Inc. v. Canyon Highway Dist. No. 4*, 139 Idaho 140, 144, 75 P.3d 194, 198 (2003)). The taxpayer cites *Evans v. Idaho State Tax Commission*, 97 Idaho 148, 540 P.2d 810 (1975) and *Thomas v. Arkoosh Produce*, 137 Idaho 352, 48 P.3d 1241 (2002) to support its theory. Both these cases were suits between private parties. The Commission was not a party in either action.¹

¹ [Redacted] involved a dispute between the buyer and the seller of a motel. The Tax Commission was originally named as a party to the action but was subsequently dismissed.

Once again, there is no precedent in Idaho for asserting the doctrine of quasi-estoppel against the Commission.

Moreover, the essential element of detrimental reliance is also lacking. As the Louisiana Supreme Court explained in *Showboat Star Partnership v. Slaughter*, 789 So.2d 554, (2001):

We disagree that extreme harm resulted from the reliance in the present case and that gross injustice will occur in the absence of the application of judicial estoppel. Detriment resulting from reliance simply has not been proved.

In reliance on advice from the Department's representatives, plaintiffs acquired the equipment without paying the taxes. Plaintiffs were harmed in that they could have paid the taxes under protest and sought recovery in court without being charged interest. The only harm to plaintiffs, as the lower courts correctly concluded, was payment of the interest incurred when they failed to pay timely under protest.

As to detriment suffered from incurring non-punitive interest on account of failure to pay lawful taxes when due, the Arizona Supreme Court in *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d 1256 (1998), reasoned:

[N]o detriment is incurred when the party's only injury is that it must pay taxes legitimately owed under the correct interpretation of the law. Nor will liability for non-punitive interest on the tax legitimately due constitute detrimental reliance. Non-punitive interest is, after all, nothing more than compensation for the use of money. The taxpayer had the benefit of using the funds before paying the tax claim and, in the legal sense, suffers no loss by reason of paying interest on the money it retained in its possession. *Valencia Energy Co. v. Arizona Dep't of Revenue* 959 P.2d at 1268-69 (citations omitted).

In this case, the taxpayer not only had the benefit of using the funds during the audit period, it also had a competitive advantage over other contractors in the same business. Also, the Commission has not imposed a negligence penalty. For these reasons, the taxpayer could not have relied on incorrect advice to its detriment, and the doctrine of quasi-estoppel does not apply.

In its protest letter, the taxpayer raised the issue of unconscionability and cites *Lovey v. Regence Blueshield of Idaho*, 139 Idaho 37, (2003). *Lovey* is a contract dispute over a clause in an insurance premium. The plaintiffs in *Lovey* argued that the insurance policy was unconscionable because of unequal bargaining power between the two parties. The decision has no relevance to tax law.

WHEREFORE, the Notice of Deficiency Determination dated July 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>
\$43,085	\$6,113	\$49,198

Interest is calculated through February 23, 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.

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.

[Redacted]
