

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[Redacted]) DOCKET NO. 21439
)
Petitioner.) DECISION
)
)
_____)

On January 14, 2008, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] and [Redacted] (taxpayer) asserting additional sales and use tax and interest totaling \$17,182 for the period of January 1, 2004, through June 30, 2007. The taxpayer protested the Notice of Deficiency Determination on February 18, 2008, and requested a reconsideration of the findings based on additional documentation provided with and after the protest. On January 14, 2009, the Commission held a hearing with the taxpayer.

The Commission has reviewed the file, is advised of its contents, and hereby issues its decision reducing the liability in part and upholding the remainder.

BACKGROUND

The taxpayer specializes in [Redacted] equipment sales and installation in homes and commercial buildings. He does not have a retail outlet. Additionally, the taxpayer provides personal services in the [Redacted] industry. A Bureau employee conducted a routine audit of the taxpayer’s records for sales and use tax compliance.

With the addition of documentation provided by the taxpayer, the auditor was able to make significant post-deficiency adjustments in the taxpayer’s favor before this case was referred to the Commission’s Legal and Policy section for the taxpayer’s administrative appeal.

TAX ISSUES

The absence of documentation prevented the auditor from accounting for all revenue to determine if sales tax was required to be charged if the tax was charged to customers and if the tax was remitted to the state. The auditor could not entirely reconcile income reported on the taxpayer's business income tax returns with sales reported on the sales tax returns. This discrepancy accounts for approximately \$5,000 in tax.

Other issues of this case involve the sale, purchase, and use of tangible personal property. In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies (Idaho Code § 63-3601 *et. seq.*). 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. All states with a sales tax have a complementary use tax.

AUDIT FINDINGS

Since the taxpayer was unable to describe or document the entire discrepancy between income for business tax purposes and sales tax purposes, this lack of documentation hampered the timely resolution of this case. Due to the incompleteness of records, the auditor believed he was justified in presuming all unexplained differences to be taxable.

As a retailer of [Redacted] products, the taxpayer could buy goods he intended to resell exempt from tax (Idaho Code § 63-3609), but his subsequent sales of those products to his customers was taxable in the absence of any exemptions (Idaho Code § 63-3612(1)). Home and

business owners who buy [Redacted] equipment are unlikely to qualify for any exemptions, and the taxpayer did not state that any of his customers claimed an exemption.

The auditor found that the taxpayer bought most resale equipment tax-free but did not charge tax when he sold these goods. For these transactions, the auditor imposed a tax. For those resale items where the taxpayer erroneously paid a sales tax, the auditor gave him credit against tax owed. Additionally, there were some untaxed purchases of equipment and office supplies which were not intended for subsequent retail sale. The auditor held these purchases taxable as no exemption applied.

ANALYSIS AND CONCLUSION

It is rare that business income and income reported for sales tax purposes are identical. The taxpayer provided personal services as well as installation labor, both of which are not taxable. While this activity explains some of the differences between the two income figures, the Commission agrees that the auditor was justified in holding the remaining undocumented differences as taxable.

The sales and use tax administrative rules are clear about documentation:

Every retailer doing business in this state and every purchaser storing, using, or otherwise consuming in this state tangible personal property shall keep complete and adequate records as may be necessary for the State Tax Commission to determine the amount of sales and use tax for which that person is liable under Title 63, Chapter 36, Idaho Code (IDAPA 35.01.02.111.01).

These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account, together with all schedules or working papers used in connection with the preparation of tax returns (IDAPA 35.01.02.111.01.b.).

During the hearing, the taxpayer again expressed that he was unable to account for the differences. He added, however, that he thought his tax accountant fabricated year-end figures to his (the taxpayer's) advantage. The taxpayer's defense that his accountant did so does not seem realistic. Higher business income figures would result in a higher business income tax, not a lower one. This, of course, is to the disadvantage of the taxpayer.

As noted, the audit findings revealed untaxed sales and purchases for which sales or use taxes were due but not paid. The Commission finds no fault with these findings, as there were no exemptions for the use of the goods in question. The Commission concurs with the auditor's approach to the field work which gave the taxpayer credit for sales tax collected against that which he should have collected and refining this figure by crediting amounts for purchases taxed in error.

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 January 1, 2004, through June 30, 2007.

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 January 14, 2008, is hereby MODIFIED and APPROVED, and, as MODIFIED, is 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>
\$8,474	\$1,987	\$10,461

Interest on unpaid tax is part of this assessment, per Idaho Code § 63-3045(6), and has been extended to June 30, 2009. Interest on unpaid tax continues to accrue until the tax is 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 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.