

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21532
[Redacted])	
Petitioner.)	DECISION
)	
)	
)	
_____)	

On October 15, 2008, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted](taxpayer) proposing use tax, penalty, and interest for the audit period April 1, 2001, through March 31, 2008, in the total amount of \$8,102.

In correspondence received October 30, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission sent two letters informing the taxpayer of his rights to an informal hearing. The first was mailed on November 21, 2008, and the second was mailed on February 23, 2009. The taxpayer responded to the second letter, and the Commission held an informal hearing on May 5, 2009.

BACKGROUND

The taxpayer is a real property contractor. During the audit period, he fabricated and installed cabinets. He was not registered with the state of Idaho for sales tax or use tax remittance, allowing Bureau staff to examine books and records covering seven years for the purpose of determining tax liability (Idaho Code § 63-3633(c)).

RELEVANT TAX STATUTES

In Idaho, the sale of tangible personal property is taxable unless an exemption applies (Idaho Code § 63-3609). If the seller of goods fails to, or cannot, charge sales tax, and no exemption applies, the buyer is obligated to pay a use tax directly to the state (Idaho

Code § 63-3621). All states with a sales tax have a complementary use tax. Both taxes have the same rate.

Retailers with insufficient physical contact with the state cannot be compelled to collect an Idaho sales tax when the retailer makes a sale in this state. Idaho Code § 63-3610 defines “retailer” for the purpose of collecting the sales tax, and Idaho Code § 63-3611 defines a retailer engaged in business in this state. However, a buyer has no statutory exemption from the obligation to pay a use tax if the seller fails to, or is not required to, collect a sales tax.

AUDIT FINDINGS AND PROTEST

The audit findings show that the taxpayer failed to pay a sales or use tax on various purchases, for which no exemption applied. The bulk of the liability was attributable to the purchase of [Redacted]. The [Redacted] was sold to the taxpayer by an out-of- state vendor that was not registered to collect sales tax in Idaho.

The taxpayer agrees that tax was owed but states that its contract with the seller was inclusive of sale, delivery, set-up, operating software, and sales tax. The taxpayer argues that the sales invoice proves that tax was collected by the seller.

Alternatively, the taxpayer argues that if the seller did not collect sales tax, the burden to pay is not on the buyer. He cites Idaho Code § 63-3619(b): “The tax hereby imposed shall be collected by the retailer from the consumer.” Finally, the taxpayer says the statutes do not allow the Commission to collect tax from both the buyer and the seller.

ANALYSIS AND CONCLUSION

The only source document made available to the Commission for the purchase of the router is an invoice from the vendor made out in the buyer's name. The vendor's address is listed in Utah.

The invoice indicates that the goods were delivered to Idaho. Under a blank sub-total field, there is a tax rate field showing 6.6 percent. Under this is a sales tax field showing the abbreviation "inc," presumed to mean "sales tax included." Below that is a total field showing \$110,000.

Commission records do not show this vendor as registered to collect Idaho sales tax. Further, the Idaho sales tax rate was 6 percent on the date of the transaction, rather than 6.6 percent (Idaho Code § 63-3619). Idaho's sales tax rate has never been 6.6 percent.

Invoices are required to show a separate statement of tax from the sales price of the goods (IDAPA 35.01.02.068.06). The Commission advised the taxpayer that the 6.6 percent tax rate might be a Utah state rate or one that includes both that state's rate in addition to a Utah county or city local option tax. Regardless, the taxpayer was advised to contact Utah's revenue agency for the refund of any tax paid in error.

There is no disagreement that the goods were delivered by the vendor to the buyer into Idaho. The evidence is insufficient to conclude that a tax, if it was charged, was an Idaho tax. Idaho gives credit for tax rightly paid to another state for tangible personal property used in this state (Idaho Code § 63-3621(j)). In this case, the sale was made in Idaho and was not subject to another state's tax. No Idaho tax credit is given for tax erroneously paid to another state.

It is precisely the transaction at issue in this decision that the use tax provisions of the Idaho Sales and Use Tax Act were enacted:

The term "use" is here defined as broadly as possible and includes anything arising out of the legal status of ownership and the incidence of ownership...By this definition, the use tax in its operation applies to any dealing with property on the part of the person holding or consuming it. It is this breadth of definition that makes the use tax concomitant of the sales tax covering those areas involving transactions in tangible personal property which are not, reached by the sales tax (Section 15 (b) from "House Revenue and Taxation Committee Report in Support of House Bill 222", creating the Idaho Sales and Use Tax Act, 1965).

It is beyond the scope of this decision to discuss whether or not the Utah-based retailer should have been registered to collect Idaho sales tax based on its delivery and installation of tangible personal property into this state or as a consequence of any other presence it may have had in this state. Statutes cited in this decision place the burden of the tax on the buyer, and the evidence is insufficient to show that the Utah-based vendor charged or collected an Idaho sales tax.

The Tax Commission does not intentionally attempt to collect tax from both parties to a retail sales transaction. While the taxpayer is concerned about the possibility, the likelihood of this type of error has no bearing on this decision. In fact, had the Tax Commission proved that the Utah retailer should have collected Idaho sales tax from the taxpayer, the retailer could have paid the tax and then sought reimbursement from the buyer (IDAPA 35.01.02.068.07).

In a separate issue, the taxpayer asked that an invoice for its purchase of a software maintenance and upgrade contract be re-examined by the Commission. The Commission notes that the invoiced charge for telephone support is not separately stated from the software upgrade promised as part of the contract. The relevant and current administrative rule states that if the fee for any maintenance agreement support service is not separately stated from the fee for upgrades or enhancements, then 50 percent of the entire charge for the maintenance contract is subject to sales tax (IDAPA 35.01.02.027.05.b.ii.). This treatment was applied to the taxpayer's purchase in question, and the Commission agrees with it.

Interest and penalty were added to the tax liability per Idaho Code §§ 63-3045(6) and 63-3046(c) respectively. Interest is accrued through December 31, 2009.

WHEREFORE, the Notice of Deficiency Determination dated October 15, 2008, is hereby APPROVED, and as APPROVED, is AFFIRMED and MADE FINAL, in accordance with the provisions of this decision.

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

TAX	PENALTY	INTEREST	TOTAL
\$7,036	\$352	\$1,085	\$8,473

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.