

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21557
[Redacted],)	
)	DECISION
Petitioner.)	
)	
)	
_____)	

On March 7, 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 use tax, penalty, and interest for the period of February 1, 2001, through December 31, 2007, in the total amount of \$38,210.

On May 9, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on February 17, 2009.

The taxpayer is a [Redacted] contractor in [Redacted], Idaho. Contractors improving real property are defined as the consumers of the materials they install under Idaho Code § 63-3609. 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. Payment of sales tax to the seller extinguishes the use tax liability. At issue are several purchases of materials on which the taxpayer paid neither sales nor use tax.

The taxpayer raised several issues at the hearing. First, the taxpayer noted that some of the items scheduled were not purchases of materials. In particular, payments to [Redacted] were payments to subcontractors. The Commission agrees that these are not taxable and has deleted them.

Second, the taxpayer said that he did not purchase materials for a job with the [Redacted]. Under the statutory definition of “use” found in Idaho Code § 63-3616, the contractor is the

consumer of materials supplied by a building owner. Idaho Sales Tax Rule 012.10.b (IDAPA 35.01.02.12.10.b. explicitly states that the use of materials supplied by a contractor working for an exempt entity is taxable. Therefore, no adjustment can be made for these items.

Third, there were several charges for [Redacted]. Such charges are taxable when the products, [Redacted] in this case, are not banded or shrink wrapped to the pallet. The pallets are not containers as defined by Idaho Code § 63-3622E and the charges are therefore taxable.

Fourth, there were several payments to [Redacted]. These were lease payments for [Redacted] equipment. Tax was imposed on the same [Redacted] equipment on another schedule, so the same payments were scheduled twice. The duplicate items have been deleted.

Fifth, the taxpayer provided copies of invoices showing that a purchase of [Redacted] was actually taxed by the seller. That purchase has, therefore, been deleted from the schedules.

Sixth, tax was imposed on several statements that the taxpayer gave to general contractors. These appeared to be for accounting purposes only and did not represent purchases of materials. Therefore, they are also being deleted.

Finally, the taxpayer objected to the imposition of use tax on a portion of the purchase price of [Redacted]. [Redacted]. While Idaho Code § 63-3613 excludes separately stated charges for transporting goods to the consumer, it specifically includes charges for freight prior to the sale. Therefore, a charge for delivering goods to the seller, i.e., freight-in, is taxable, even if it is stated separately.

WHEREFORE, the Notice of Deficiency Determination dated March 7, 2008, is MODIFIED, and as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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

TAX	PENALTY	INTEREST	TOTAL
\$13,898	\$695	\$4,841	\$19,434

Interest is calculated through May 29, 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 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.
