

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 21581
)
) DECISION
Petitioner.)
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On November 13, 2008, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting additional sales and use tax, penalty, and interest totaling \$5,421 for the period of December 1, 2005, through February 29, 2008. The taxpayer protested the Notice of Deficiency Determination on November 17, 2008, and declined a hearing in a letter received December 24, 2008.

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

BACKGROUND

The taxpayer operates a restaurant. A Bureau employee conducted a routine audit for sales and use tax compliance. The issues of this case involve the sale, purchase, and use of tangible personal property. The audit findings revealed some untaxed sales and some purchases for which no sales or use taxes were paid.

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.

AUDIT FINDINGS

The taxpayer did not raise any specific objection to the audit findings, which included the taxable use of supplies, assets, and inventory withdrawals (i.e., food) for non-sale purposes. A restaurant can buy goods it intends to resell exempt from tax (Idaho Code § 63-3609), but the purchase and use of its assets and supplies is taxable. Items withdrawn from a resale inventory for use other than the intended purpose (e.g., free employee meals, complimentary meals and other gifts) are to be taxed on the cost of the items (IDAPA 35.01.02.105.06.b.).

The taxpayer specifically questioned the inclusion of interest with the tax deficiency. However, the addition of interest is a statutory requirement as evidenced by the use of “shall”:

Interest on deficiencies. *Interest* upon any deficiency *shall be assessed* at the same time as the deficiency and *shall be due and payable* upon notice and demand from the state tax commission and *shall be collected* as a part of the tax at the rate provided in section 63 3045, Idaho Code, from the date prescribed for the payment of the tax (Idaho Code § 63 3632, emphasis added).

ANALYSIS AND CONCLUSION

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 December 1, 2005, through February 29, 2008.

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 November 13, 2008, is hereby APPROVED, and 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>
\$4,652	\$875	\$5,527

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.