

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 21585
[REDACTED])
) DECISION
Petitioner.)
_____)

On September 19, 2008 the Sales and Use Tax Audit Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted]. (taxpayer) asserting additional use tax and interest totaling \$34,694 for the period of July 1, 2005, through December 31, 2007. The taxpayer protested the Notice of Deficiency Determination in a letter received November 14, 2008. The taxpayer requested an informal hearing, which was held on February 20, 2009.

The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the deficiency determination.

BACKGROUND AND APPLICABLE TAX LAW

The taxpayer is a real property contractor that fabricates and installs [Redacted]. In Idaho, all persons engaged in constructing, altering, repairing, or improving real estate are consumers of the material used by them. All sales of building materials to, or used by, such persons are taxable (Idaho Code § 63-3609(a)).

Contractors who buy materials from Idaho-registered retailers should pay a sales tax to those vendors. When contractors cannot or do not pay a sales tax to their vendors, or when contractors buy from out-of-state vendors, many of whom are not required to collect an Idaho sales tax, they owe a use tax directly to the state. 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.

The sole audit issue is use tax owed by the taxpayer on counter top material purchases. The taxpayer did not pay sales tax on its purchases and did not begin to accrue use tax on purchases until February 2007, well into the period under audit.

AUDIT PROTEST

In its protest, the taxpayer does not dispute the tax issue *per se*. It lays blame on a former manager who failed to remit tax and stresses that a change in management remedied the fault. It further states that it has cooperated fully with the Bureau's auditor and has shown a desire to comply with the tax law.

Additionally, it stated that on January 1, 2008, the business ceased operations and is now a shell corporation with no revenue from which to pay the tax asserted by the auditor.

It was determined from information provided at the hearing that the taxpayer's business had 14 shareholders during the audit period. A disagreement among some of the shareholders, the details of which are not pertinent to this decision, resulted in a restructuring. According to the taxpayer, there are currently (as of the informal hearing date) 12 of the original 14 shareholders incorporated under a similar name, [Redacted].

This most recently incorporated entity operates out of the same physical space as the prior one and uses the same productive assets. Further, the new entity leases a major piece of equipment from the first in order to continue to pay off a loan used to purchase it.

ANALYSIS

The Commission does not dispute that the taxpayer was cooperative with the auditor, nor does it dispute that the taxpayer began to comply with the tax law in the latter months of the

audit period. The auditor did not impose a negligence penalty pursuant to Idaho Code § 63-3046(a).

The Commission finds it unpersuasive that the taxpayer's reorganization is sufficient to dissuade it from writing a decision upholding the audit findings. This decision is limited to the tax law as it applied to the taxpayer's activities during the audit period and it makes no judgments beyond or apart from that narrow question before it. The Commission concludes that the taxpayer owes the tax and that nothing in the latter's defense persuades it otherwise.

WHEREFORE, the Notice of Deficiency Determination dated September 19, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner pay the following tax, and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$29,657	\$6,373	\$36,030

Interest is computed through September 30, 2009.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner'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.
