

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[Redacted],) DOCKET NO. 21619
)
) DECISION
Petitioner.)
_____)

On July 25, 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], and [Redacted] (taxpayer) proposing use tax, penalty, and interest for the period of July 1, 2001, through June 30, 2008, in the total amount of \$39,940.

On September 19, 2008, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to two hearing rights letters, and no informal hearing was held.

The taxpayer is in the business [Redacted]. The taxpayer also installs [Redacted].

Idaho Code § 63-3609 defines contractors improving real property as the consumers of the materials they install. Idaho Code § 63-3621 imposes a use tax on purchases of tangible personal property consumed in Idaho. The use tax is only imposed on purchases of goods that were not taxed by the seller. The taxpayer purchased most of the materials it installed from out-of-state vendors that did not charge sales tax and, therefore, owes use tax on those purchases.

The taxpayer’s protest letter stated only that the owners “needed additional information in order to state factual and legal reasons” why the NOD was in error. The taxpayer also mentioned that a lot of the materials they purchase are consumed in the process of [Redacted].

There is no provision in the Idaho Sales Tax Act for allowing a credit for building materials that are consumed or broken during the fabrication process. The tax is imposed on the

sales price of the goods. The same issue was discussed in the Commission's decision in Docket No. 21430, which stated:

As stated previously, Idaho Code § 63-3621 imposes a tax on the storage, use, or other consumption of tangible personal property. The tax is imposed on 6 percent of the "value of the property, and a recent sales price shall be presumptive evidence of the value of the property...." In the taxpayer's case, the value was the sales price charged by the vendor, not 50 percent of that sales price. In fact, Sales Tax Brochure # 2 states: *The amount of use tax is based on the fair market value of the item when it first becomes taxable. A recent purchase price of the item is usually its fair market value.* (Emphasis added.) The use [Redacted] became taxable at the time it was delivered to Idaho.

Furthermore, if the taxpayer had purchased [Redacted] from an Idaho vendor, the tax would have been applied to the entire purchase price and not just 50 percent. There is no provision in the Sales Tax Act that allows for a deduction from the sales price for building materials that were used up or discarded in the process of [Redacted].

WHEREFORE, the Notice of Deficiency Determination dated July 25, 2008, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$29,640	\$7,410	\$4,068	\$41,118

Interest is calculated through June 5, 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.