

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 21670
[REDACTED])
) DECISION
Petitioner.)
_____)

On October 21, 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 and interest for the period of January 1, 2005, through August 31, 2008, in the total amount of \$15,708. In a letter dated December 1, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on February 20, 2009.

The Commission upholds the audit findings for the reasons that follow.

BACKGROUND AND APPLICABLE TAX LAW

In Idaho, a retail sale is defined as an exchange of tangible personal property for consideration (e.g. money) and is taxable unless an exemption applies (Idaho Code §§ 63-3609 and 63-3612). Idaho retailers are required to collect sales tax from buyers (Idaho Code § 63-3619) in the absence of an exemption.

The taxpayer is a real property contractor that builds and installs [Redacted]. In Idaho, contractors improving real property are defined as the consumers of materials they install, as stated in 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 and, therefore, a contractor owes a use tax on materials it buys. However, the buyer’s liability for use tax remains only if the seller

cannot, or fails to, collect sales tax. The use tax is a complementary tax to the sales tax and the buyer owes the use tax directly to the state. The sales and use tax rates are identical.

At issue in this decision are purchases of [Redacted] materials on which the taxpayer paid neither sales nor use tax.

PROTEST ISSUES

The taxpayer does not dispute the tax law as it applies to its business. That is, the taxpayer recognizes that it owed a tax on its purchase or use of construction materials that it incorporated into realty.

However, the taxpayer takes issue with Idaho registered sellers that could have, but did not collect Idaho tax on material sales to the company. According to the taxpayer's protest letter dated December 1, 2008, "The vendor should be responsible for collecting sales tax and should share some of the [taxpayer's] tax burden [for its failure to do so]."

ANALYSIS

As noted beforehand, an Idaho-registered seller does have a responsibility to collect the tax, but only a payment of sales tax will extinguish the use tax liability (Idaho Code § 63-3621(a)). Further, another section of the tax code reads:

When the tax commission determines that a retail sale is not exempt and the purchaser has failed to voluntarily pay sales or use tax in regard to the property or services purchased, the tax commission may collect the sales tax which was due at the time of the sale or the use tax due at the time of storage, use or other consumption of the taxable goods or services by issuing to the purchaser a notice of deficiency determination, asserting tax together with interest, at the rate provided in section 63-3045, Idaho Code, and may assert penalties found elsewhere in this chapter (Idaho Code § 63-3624(h)).

All states with a sales tax have a complementary use tax. An appellate court in California upheld the collection of use tax from the buyer in spite of the requirement that retailers are agents of the state with responsibility for the collection of sales tax.

While the provisions which require the retailer, in certain cases where he can be reached, to collect the tax and pay it over to the state are valid and set up a statutory scheme making the retailer an agent of the state for collection [internal citation omitted] *they do not shift the direct burden of the tax from the purchaser to the retailer, nor do they relieve the purchaser from the primary liability cast on him...* unless he pays the tax to the retailer. The provision ... making the tax a debt of the retailer to the state, where he is required to collect it, is a part of this statutory scheme, and its effect, where such collection is not made, is merely to hold the collection agent liable for his default in the performance of his duty as such. In such a case the unpaid tax may yet be collected by the state from the purchaser...(*Brandtjen & Kluge, Inc., v. Fincher. Same v. Atkinson* 44 Cal.App.2d Supp. 939, 111 P.2d 979 1941. (Emphasis added).

For these reasons, the Commission upholds the Bureau's Notice of Deficiency Determination against the taxpayer for unpaid tax and the statutorily prescribed interest. Although the taxpayer mentions a penalty, the Notice did not include one.

The taxpayer asks that the Commission allow it to make 24 "interest and penalty free equal monthly installments...." to satisfy claims against it. As noted earlier, no penalty was imposed. Further, there is no statutory provision for a penalty to be added when installment payments are made. Interest, however, is a statutory requirement.

This decision deals with legal issues related to audit findings. Payment plans are available to taxpayers if the terms requested are satisfactory to the Commission, but they are arranged for and implemented as part of an administrative function outside of the scope of this decision.

The amount due from the taxpayer has been reduced by two prepayments of \$664 each, as reflected in the total below. Partial payments are applied first to accrued interest and then to tax (IDAPA 35. 35.02.01.140). Since interest accrues on unpaid taxes, interest accrual is slowed to the extent that a partial payment reduces the tax owed. As shown in the calculations below, the taxpayer's prepayments were insufficient to satisfy the accrued interest and to lower the tax.

WHEREFORE, the Notice of Deficiency Determination dated October 21, 2008, is MODIFIED, and as MODIFIED, is AFFIRMED, and MADE FINAL.

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

	TAX	INTEREST	TOTAL
	14,929	1,249	(To 10/15/2008)
Less 10/15/08 payment		(664)	
Additional Interest 10/15/2008 to 11/15/2008		89	(7% per annum in 2008)
Less 11/15/08 payment		(664)	
Additional Interest 11/15/2008 to 10/31/2009		753	(5% per annum in 2009)
Total	14,929	763	\$ 15,692

Interest is calculated through October 31, 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.