

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21698
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On November 14, 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 sales and use tax and interest for the period of October 1, 2005, through September 30, 2008, in the total amount of \$39,013.

On January 14, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on May 18, 2009.

The taxpayer is in the business of [Redacted]. The taxpayer makes some over-the-counter retail sales, but the majority of its business is [Redacted] that is owned by their customers.

Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act. The statute states, in relevant part:

63-3612. Sale. (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) *Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting...* (Emphasis added.)

Transactions included within this definition are taxable when the buyer is the consumer. Idaho sales tax Rule 029(01)(e) (IDAPA 35.01.02.029) includes a

specific example on [Redacted] **01. In General.** Tax applies to charges for producing, fabricating, processing, printing, imprinting, or the engraving of tangible personal property for a consideration, whether or not consumers furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, imprinting, or engraving....
(7-1-93)

e. Example 5: An individual takes [Redacted]the purchaser's specification. The total price paid for this processing shall be subject to sales tax.
(7-1-93)

During the audit period, the taxpayer failed to collect sales tax on sales of [Redacted]. The auditor imposed sales tax on all such sales during the audit period. This is the only issue in this case.

The taxpayer objected to the audit findings for two reasons. First, the auditor had to estimate the taxable sales for the audit period. The taxpayer believes the amounts used to calculate the deficiency are not accurate. It is true that the auditor only examined the sales records for January through September 2008. The taxpayer was unable to provide sales records for any period prior to January 2008. The auditor, therefore, projected the 2008 sales over the entire audit period. Under the circumstances, the Commission used the best records available.

Second, the taxpayer stated that the staff of the Commission's [Redacted] field office told one of the owners, [Redacted], that they did not need to collect sales tax on sales of [Redacted]. In a letter subsequent to the hearing, the taxpayer stated that [Redacted] went to the [Redacted] office the first few times she filled out sales tax returns and at no time did the Commission's staff inform her that sales of [Redacted] were taxable.

According to the Commission's staff, [Redacted] came to the office on August 27, 2008. She was then informed that such sales were actually taxable. No one who works in the Commission's [Redacted] field office could remember her asking for advice prior to that time.

Despite these facts, however, there is no authority in Idaho to support the idea that a taxpayer may rely on incorrect verbal advice from the Commission. The taxpayer has essentially raised the issue of equitable estoppel. Equitable estoppel arises:

[w]hen a party makes a false representation or concealment of a material fact with actual or constructive knowledge of the truth; it is made with the intent that it be relied upon; the party asserting estoppel does not know or could not discover the truth; and the party asserting estoppel relies on it to the party's prejudice. *Hecla Min. Co. v. Star-Morning Min. Co.*, 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992); *Allen v. Reynolds*, 145 Idaho 807, 186 P.3d 663, (2008).

Even if one assumes the taxpayer was advised that [Redacted] was not taxable, there is no precedent in Idaho to support the argument that the Commission can be estopped from asserting a sales tax deficiency in this case. In fact, the Idaho Supreme Court has ruled the opposite:

In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel. (Citations omitted.)

The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax. (Citations omitted.) *State of Idaho v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

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 October 1, 2005, through September 30, 2007.

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 14, 2008, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$35,103	\$4,925	\$40,128

Interest is calculated through August 15, 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.
