

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21801
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On October 3, 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, penalty, and interest for the period ending July 31, 2005, in the total amount of \$1,328.

On December 3, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission sent the taxpayer two letters informing him of his right to an informal hearing with the Commission. The taxpayer did not respond to either letter.

At issue in this case is the imposition of use tax on \$15,000 worth of materials that the taxpayer used to [Redacted]. The taxpayer claimed that the use of [Redacted] was exempt under Idaho Code § 63-3622D, commonly known as the “production exemption,” when he titled and registered [Redacted] and did not pay sales tax

Idaho Code § 63-3621 imposes a use 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. Payment of sales tax to the seller extinguishes the use tax liability. Idaho Code § 63-3622D(g)(3) states that property used [Redacted] is excluded from the production exemption, regardless of use.

The taxpayer has an [Redacted]. Rule 105(6)(b) (IDAPA 35.01.02.105(6)(b)) states:

b. Retailers Must Report Own Use and Nontaxed Transactions. All retailers must report any sales or purchases on which no sales or use tax was collected or paid. Goods sold or produced and consumed by the retailer, items withdrawn from stock for personal use or employee use, stock removed and used for gift or promotional purposes, or any combination of such uses are subject to tax.

In his protest, letter [Redacted] stated that he paid sales tax on the [Redacted] when he purchased them. The taxpayer has submitted no documentation to show that he did pay sales tax when he bought the materials.

The taxpayer has not provided the Commission with information to establish that the amounts asserted in the NOD are incorrect. As a result, the Commission will uphold the NOD, as adjusted. 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). 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 October 3, 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>
\$900	\$255	\$237	\$1,362

Interest is calculated through August 28, 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.
