

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21934
[Redacted])	
Petitioner.)	DECISION
)	
)	
_____)	

On February 19, 2009, the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted], [Redacted]. The Notice proposed additional use tax and interest in the total amount of \$1,592 for the period January 1, 2006, through June 30, 2006. The taxpayer filed a timely appeal and petition for redetermination on April 21, 2009.

The taxpayer requested an informal conference, which was held on July 7, 2009. Following a review of the audit file, and considering the information obtained at the informal conference, the Commission upholds the audit findings for the following reasons.

Background and Applicable Tax Law

[Redacted].

The sale of tangible personal property is subject to tax (Idaho Code § 63-3612) unless the buyer qualifies for exemptions enumerated in the Sales Tax Act. The seller is required to collect a tax on the sales price of the goods (Idaho Code § 63-3619(b)). In contrast, when a contractor improves real property by furnishing and installing goods, such as [Redacted], the contractor owes a tax on the cost of the goods but does not charge a retail sales tax to the customer:

All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property (Idaho Code § 63-3609(a)).

Thus, a business like the taxpayer must collect sales tax from its customers when it makes sales of [Redacted], but must either pay sales tax to its vendor or use tax (to the state) on the value of materials it uses in assembling a [Redacted] and using it to improve real property.

Audit Findings and Protest

One customer charged tax in error by the taxpayer during the audit period became aware of the error and received a refund from the Tax Commission. Having no sales tax on these transactions to offset the use tax rightly owed by the taxpayer, the auditor asserted use tax against the taxpayer.

A real property contractor will bill its customers enough to cover all costs as well as a profit. A contractor's costs include the tax it owes on the purchase of the materials used. When a contractor erroneously charges a sales tax which may then be refunded to the customer charged in error, it may not have recourse against the customer for use tax later asserted by the Commission.

The taxpayer brought up this argument in the informal conference. The taxpayer believes that it should have been contacted by the Commission when its customer requested a refund. It would have argued in the presence of the customer and the Commission that the customer was entitled only to the difference between the sales tax collected in error and the use tax owed by the taxpayer to the state. As it now has no means of recovery from the customer, it sees an inequity.

The taxpayer says that it paid significantly more tax to the state by its billing practices than it would have by correctly accruing use tax.¹ It believes that the Commission should not now seek even more tax. Finally, the taxpayer believes that the Commission's practice of refunding sales tax to a customer and later asserting a use tax liability on the contractor sets a

¹ Per Idaho Code § 63-3621, the taxpayer owed use tax on the value (i.e., purchase price) of the material it used in real property improvements. On invoices, however, it charged customers a tax based on the materials' marked-up "sales price" as it would do on retail sales invoices.

precedent that could be financially difficult for the taxpayer if similarly situated customers successfully receive sales tax refunds.

Analysis

The taxpayer does not dispute the tax law as described beforehand. It recognizes that a real property contractor is legally obligated for tax on materials it uses in real property improvements. It disagrees with the way in which the Commission seeks to extinguish the liability.

When the taxpayer says that it collected more tax, by its methods, than was due to the state, it is asking that it be allowed to credit its liability regarding any particular customer with this “excess tax” collected from other customers.

For transactions occurring earlier than October 1, 2008, the Commission allows an offsetting of use tax liability with sales tax collected erroneously on real property contracts on a contract-by-contract basis. It sees no reason to do so in the aggregate, however. Some taxpayers have and will seek refunds from the Commission for sales taxes paid in error. There is nothing inherently fair about rewarding any contractor’s improper billing practices with taxes it collected in error from others on transactions that bear no relation to the liability.

The taxpayer asks that the Commission consider an alternative to issuing this liability. It asks that the Commission mediate a discussion between the taxpayer and its refund-seeking customers. Ultimately, it asks that the Commission broker an agreement where the customer will receive only the difference between the retail sales tax charged and the tax owed by the contractor. This agreement would extinguish the taxpayer’s liability. However, there is no legal authority for the Commission to conduct mediation in contract disputes between parties.

The taxpayer is concerned about the effect of future refunds given to its customers. The contractor says it has changed its billing practices and is paying the tax it rightly owes. While future refunds on this issue are possible, the incidence of those that will affect the taxpayer diminish over time as the statute of limitations for refunds is three years (Idaho Code § 63-3626(b)(1)).

The Bureau added interest as appropriate per Idaho Code § 63-3045. Interest is calculated to February 28, 2010, and continues to accrue until the liability is paid.

WHEREFORE, the Notice of Deficiency Determination dated February 19, 2009, is hereby AFFIRMED, and as AFFIRMED, is APPROVED and MADE FINAL.

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

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,332	\$317	\$1,649

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.