

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [Redacted],) DOCKET NO. 21829
)
)
 Petitioner.) DECISION
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 _____)

On January 21, 2009, the staff of the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted](taxpayer) proposing sales and use tax, penalty, and interest for the audit period July 1, 2005, through June 30, 2008, in the total amount of \$26,303.

In correspondence dated March 5, 2009, the taxpayer filed a timely appeal and petition for redetermination. At the taxpayer’s request, the Commission held an informal hearing on May 11, 2010. For the reasons that follow, the Commission modifies the audit findings in part and upholds the remainder.

BACKGROUND

The taxpayer owns and operates a [Redacted] and sold a considerable number of [Redacted] as well. According to the accountant who represents him in this protest, the taxpayer deals in [Redacted], thus his sales market is throughout the contiguous states.

In an examination of the taxpayer’s books and records for the purpose of sales tax compliance, the Bureau’s auditor found untaxed [Redacted], [Redacted], an under-reporting of sales on sales tax returns, and untaxed purchases of general operating supplies.

The Commission granted the taxpayer a considerable delay in order that he and his representative might adequately prepare for the informal hearing and locate records and other

evidence that could lower the deficiency. To an extent, these efforts were successful, and they are discussed in this narrative.

APPLICABLE TAX LAW

In Idaho, the sale of tangible personal property is taxable (Idaho Code §§ 63-3612(1) and 63-3619). The sale of tangible personal property by an Idaho vendor with delivery by the vendor to a point outside of Idaho, or arranged by the vendor to be shipped by common carrier to a destination outside of Idaho, is not an Idaho sale and is therefore not subject to tax (Idaho Code § 63-3622Q). There are other circumstances in which sales may be made tax exempt, but these were not factors in this case.

The [Redacted] (i.e. tangible personal property) in Idaho is subject to a use tax unless an exemption applies. The use tax rate is the same as the sales tax rate. The payment of Idaho sales tax to a registered vendor extinguishes the use tax liability (Idaho Code § 63-3621 and (j)). Thus, if a buyer does not, or cannot, pay a sales tax to the vendor, and no exemption applies to the purchase, the buyer owes a use tax directly to the state.

In order for an auditor to determine a taxpayer's compliance with the sales and use tax code, the taxpayer must maintain a complete and orderly set of records related to purchases, sales, and the accrual and remittance of tax collected:

Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require (Idaho Code § 63-3624(c)).

A Sales Tax Rule 111 interprets this requirement and is cited below in relevant part:

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b. These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account, together with all schedules or working papers used in connection with the preparation of tax returns.

03.

b. General and subsidiary books of account. A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

03.

c. Supporting documents and audit trail. The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the State Tax Commission upon request. The system shall be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available. (IDAPA 35.01.02.111.)

PROTEST SUMMARY

The taxpayer's representative initially indicated that a hearing was not necessary, and on December 11, 2009, he sent post-deficiency paperwork for a reconsideration of the findings. The letter begins with a description of the taxpayer's record-keeping system. Some of the record-keeping description was intended to convince the Commission that out-of-state buyers never entered Idaho to take possession of purchased goods.

The protest letter includes an admission that some sales data was not reported for sales tax purposes. It also contains admissions that particular audit findings are accurate.

The letter explains at length that the taxpayer's credit card sales and customers' payment documentation may be separated in time from sales invoices because parts paid for are first detached from [Redacted]. Thus, the credit card receipts could not always easily be traced to an

invoice for a confirmation of tax. The protest letter concludes with a recap of what the taxpayer believes is the amount owed. It shows amounts owed, balanced against sales tax paid, to arrive at a liability it asks the Commission to accept.

On February 22, 2010, the Commission informed the taxpayer that its explanations and recap were insufficient audit evidence to lower the deficiency and, again, mentioned the taxpayer's right to an administrative hearing. The taxpayer's representative, a CPA, requested a hearing for May or June as to not interfere with his annual federal and state income tax filing obligations in April.

At the May 11, 2010, hearing, the taxpayer provided handwritten sales information that was not available during the audit fieldwork and had only recently been brought to the representative's attention by the taxpayer. This information was later compiled in a more orderly fashion by the representative and sent to the Commission.

On August 2, 2010, the taxpayer's representative sent the results of a survey it conducted on undocumented out-of-state sales. According to the taxpayer, each out-of-state customer was provided a set of facts that described what was purchased. In response, the customers attested to never having been in Idaho to take possession of the questioned goods.

ANALYSIS

There are no documents accompanying the recap included in the taxpayer's December 2009 letter that point to any specific discrepancy the taxpayer finds with the audit workpapers, nor is there any tie-in to existing records to give the recap credibility over the audit findings.

The material brought to the hearing in May 2010, and later mailed to the Commission is not traceable to any transactions held taxable by the auditor and is therefore without value as audit evidence.

In one notable exception, however, the Commission and the auditor agreed that it was reasonable to accept the attestations of the out-of-state customers, and the Commission subsequently removed the related questioned untaxed sales liability from the findings. The amount owed, shown at the end of this decision, reflects a reduction from the Notice sent January 21, 2009.

The remaining liability is represented in voluminous line items within the work papers presented by the auditor to the taxpayer. It is not feasible to cover each in detail within this decision. While some line items are sales of parts and whole units and others are purchases, all have a common element. That is, the transactions either had accompanying documentation showing that the correct tax was not accounted for or the necessary documentation to make an informed decision was absent.

For the foregoing reasons, the Commission issues this decision.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed this addition and found it to be appropriate per Idaho Code §§ 63-3045(6) and 63-3046. Interest is accrued through December 31, 2010, and continues to accrue until the tax liability is paid.

WHEREFORE, the Notice of Deficiency Determination dated January 21, 2009, is hereby ADJUSTED and, as ADJUSTED, is APPROVED, AFFIRMED, and MADE FINAL in accordance with the provisions of this decision.

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>
\$16,785	\$839	\$2,615	\$20,239

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 _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.