

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted]) DOCKET NO. 22084
)
) DECISION
Petitioner.)
_____)

On April 30, 2009, the staff of 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](taxpayer) proposing sales tax and interest for the audit period May 1, 2006, through September 30, 2008, in the total amount of \$8,480.

In correspondence received July 1, 2009, the taxpayer filed a timely appeal and petition for redetermination. At the taxpayer’s request, the Commission held an informal hearing on February 10, 2010.

BACKGROUND

The taxpayer operates a seasonal retail business from multiple Idaho locations. The seller’s permit issued by the Tax Commission to the taxpayer, for the purpose of enabling retailers to routinely collect and remit sales tax, is dated December 2006, with an effective date of May 2006.

In Idaho, the sale of tangible personal property is taxable unless an exemption applies (Idaho Code § 63-3609). Thus, a retailer must collect sales tax from customers based on the sales price.

All returns due and owing sales tax for 2006 were filed late. All returns for sales activity in 2007 were filed late in July 2008. There were late filings for some reporting periods in 2008, and all sales activity for 2009 was not reported until February 2010.

AUDIT FINDINGS AND PROTEST

An audit of the taxpayer revealed that the owner did not, in fact, collect sales tax from his customers, none of whom were believed to have an exemption from paying the tax. Rather, the taxpayer calculated tax (generally much later than it was due, as noted previously) based on sales revenue and remitted it to the state. However, the audit also revealed a disparity between income reported for income tax purposes and revenue reported for sales tax purposes. As no exemptions applied and all sales were presumed taxable, the auditor held reported income in excess of that reported for sales tax purposes as an additional taxable amount.

At the hearing and in the protest letter, the taxpayer did not raise any issues with how the audit was conducted or the results.

ANALYSIS AND CONCLUSION

The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice is incorrect. As a result, the Commission will uphold the deficiency notice for the period May 1, 2006, through September 30, 2008.

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).

Interest was added to the tax liability per Idaho Code §§ 63-3045(6). Interest is accrued through June 14, 2010, and continues to accrue until the tax liability is paid.

WHEREFORE, the Notice of Deficiency Determination dated April 30, 2009, is hereby APPROVED, and as APPROVED, is 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$7,761	\$1,088	\$8,849

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.
