

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 22131 |
| [Redacted], |) | |
| |) | |
| Petitioner. |) | DECISION |
| _____ |) | |

On May 29, 2009, 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 February 1, 2007, through December 31, 2008, in the total amount of \$6,130.

On July 28, 2009, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to letters informing it of its right to a hearing before the Commission.

The taxpayer is a business that sells and installs [Redacted]. During the audit period, the taxpayer collected sales tax from its customers on sales of installed [Redacted]. Since sales of real property improvements are not subject to sales tax, the tax was erroneously collected.

Idaho Code § 63-3612 states that the term “sale” means “any transfer of title... of tangible personal property for a consideration.” The definition does not include sales of real property improvements. Thus, the sale of a real property improvement to the property owner is not subject to tax. Instead the tax is imposed at the time when the contractor purchases materials. Idaho Code § 63-3609(a) states:

(a) 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. (Emphasis added.)

Also, Idaho Code § 63-3621 imposes a use tax on the storage, use, or consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. Every state that imposes a sales tax also imposes a complementary use tax. Paying sales tax to the vendor of tangible personal property extinguishes the use tax liability. In this case, the auditor imposed sales tax on the taxpayer's materials purchases, because it did not pay tax to its vendors when it bought the materials.

The taxpayer does not dispute the tax law. It recognizes that a real property contractor is legally obligated for tax on materials it uses in real property improvements, and has been complying with the law since January 2010.

WHEREFORE, the Notice of Deficiency Determination dated May 29, 2009, 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> |
| \$5,617 | \$945 | \$6,562 |

Interest is calculated through September 15, 2010, 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 taxpayers' 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.
