

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22179
)
)
Petitioner.) DECISION
)
_____)

On March 19, 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 August 1, 2005, through July 31, 2008, in the total amount of \$12,296.

On May 14, 2009, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request an informal hearing.

The taxpayer is in the business of selling commercial [Redacted]. The taxpayer also operates [Redacted] in [Redacted], a [Redacted] repair business.

The taxpayer objects to the imposition of sales tax on certain sales to [Redacted], on the sale of a [Redacted], and on the imposition of use tax on several purchases made with credit cards.

Sales to [Redacted]

During the audit period, the taxpayer sold [Redacted]. The buyers claimed that the use of the equipment was exempt under Idaho Code § 63-3622D, commonly known as the “production exemption.” Idaho Code § 63-3622 states that when a buyer executes a valid exemption claim form (Form ST-101), the seller is relieved of the obligation to collect tax, unless the sale is “taxable as a matter of law.” It is possible that the [Redacted]equipment in a manner that did not qualify for the production exemption. Nevertheless, the Commission cannot say that the sales

were taxable as a matter of law. Therefore, the Commission is deleting those sales transactions for which it had valid ST-101s on file. If the equipment was not used in an exempt manner, it is the buyer's responsibility to remit use tax on the purchases.

Credit Card Purchases

The audit staff has also deleted several of the credit card purchases for which the taxpayer was able to provide documentation showing that the purchases were either not taxable or were taxed by the seller.

Sale of the [Redacted]

Finally, the taxpayer stated that the [Redacted] was sold to an Arizona purchaser who purchased it for resale. Businesses, such as the taxpayer, with an Idaho seller's permit are required to collect tax on their sales of tangible personal property, including types of property that the retailer does not normally sell. Idaho Sales Tax Rule 099.08 states:

08. Sales of Business Assets. Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. *Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax.* Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. [Emphasis added.]

The taxpayer did not have the buyer fill out a resale or exemption certificate and has provided no evidence to identify the purchaser of the [Redacted]. The taxpayer has, therefore, not met the burden of proving that the sale was exempt.

The deletions discussed above reduced the amount of tax due to \$6,492. The Commission notes that the taxpayer made a payment of \$4,300 on June 25, 2009. The amount of tax and interest due, shown below, is the amount owed after subtracting this payment.

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

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

TAX	INTEREST	TOTAL
\$3,273	\$139	\$3,412

Interest is calculated through April 30, 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 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.
