BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 22229
[Redacted],	)	
	)	DECISION
Petitioner.	)	
	)	

On June 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](taxpayer), proposing sales tax, use tax, and interest for the audit period October 1, 2005, through October 31, 2008, in the total amount of $53,379.

In correspondence dated September 1, 2009, the taxpayer filed a timely appeal and petition for redetermination. At the taxpayer's request, the Commission held an informal hearing on December 2, 2009. The taxpayer sent follow-up documentation on March 1, 2010.

BACKGROUND AND APPLICABLE TAX LAW

The taxpayer is both [Redacted]. The taxpayer obtained a sales and use tax permit issued by the Tax Commission prior to the period under audit.

In Idaho, the sale of tangible personal property is taxable. Thus, a retailer must collect sales tax from customers based on the sales price, unless an exemption applies (Idaho Code § 63-3609). If a valid exemption applies and is claimed, the seller must obtain evidence, usually in the form of a certificate completed by the buyer (Idaho Code § 63-3622).

A buyer owes tax on the purchase of tangible personal property. If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state (Idaho Code § 63-3621). All states with a sales tax have a complementary use tax. Both taxes have the same rate. The sales and use tax permit, referred to

previously, allows a seller to collect and remit tax on taxable sales and to accrue and remit tax on items subject to use tax.

Certain [Redacted] can be both purchased and registered for on-road use exempt from sales and use tax, but they must meet the following criteria:

> Sale or lease of motor vehicles with a maximum gross registered weight over twenty six thousand (26,000) pounds, which shall be immediately registered under the international registration plan, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under the international registration plan when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any annual registration period under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63 3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any annual registration period under the international registration plan (Idaho Code § 63-3622R(c)).

AUDIT FINDINGS AND PROTEST

The audit revealed that the taxpayer failed to collect sales tax from certain purchasers who either did not qualify for an exemption or did not provide the required documentation to validate an exempt purchase.

Further, the taxpayer purchased and registered some [Redacted] tax exempt under the International Registration Plan referred to in the previously cited statute, but did not meet the threshold of “substantially used in interstate commerce” and therefore failed to qualify for a tax exemption.

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

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 Notice for the period October 1, 2005, through October 31, 2008.

A determination of the State Tax Commission is presumed to be correct (*Albertsons, 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 June 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:

TAX	INTEREST	TOTAL
$47,704	$ 7,544	$55,248

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.

_____