

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 22236  
Petitioner. ) DECISION  
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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 use tax and interest for the audit period May 1, 2005, through March 31, 2008, in the total amount of \$65,060.

In correspondence dated August 31, 2009, the taxpayer filed a timely appeal and petition for redetermination. At the taxpayer’s request, the Commission held an informal hearing on January 26, 2010.

**BACKGROUND AND APPLICABLE TAX LAW**

The taxpayer is primarily a contractor improving real property in Idaho, although there were some retail sales made during the audit period.

In Idaho, the sale of tangible personal property is taxable unless an exemption applies (Idaho Code § 63-3609). Idaho retailers must collect sales tax from customers based on the sales price. Out-of-state vendors with no Idaho presence cannot be required to collect an Idaho sales tax on items it ships to Idaho locations by common carrier (Idaho Code §§ 63-3611 and 63-3615A).

However, Idaho Code § 63-3621 imposes a tax on the storage, use, or other consumption of tangible personal property in Idaho. This use tax is a complementary tax to the sales tax. The

tax rate is the same as the sales tax and is imposed on the value of the property. All states with a sales tax have a complementary use tax.

When property is stored, used, or consumed in Idaho the user owes use tax unless he has paid sales tax on the purchase of the property or an exemption applies. [Redacted] (Idaho Code § 63-3609(a)).

#### AUDIT FINDINGS AND PROTEST

According to the audit findings, all of the taxpayer's retail sales were treated appropriately, but there was a use tax liability. The taxpayer made untaxed purchases of operating assets and [Redacted] materials. The auditor imposed use tax on these transactions because no exemption applied.

#### ANALYSIS AND CONCLUSION

The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the deficiency notice for the period May 1, 2005, through March 31, 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 October 31, 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:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$53,992	\$ 14,218	\$ 68,210

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

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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.

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