

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22302
[Redacted])	
)	DECISION
Petitioner.)	
)	
)	
)	

On August 10, 2009, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer) asserting amusement device permit penalties totaling \$800 for the period July 1, 2009, through June 30, 2010.

The taxpayer protested the penalty in a letter received October 13, 2009. The Commission sent hearing rights letters on November 5, 2009, and December 31, 2009, but the taxpayer did not respond.

Having reviewed the audit file, the protest letter, and applicable Idaho statutes, the Commission hereby modifies the Notice for the following reasons.

Background

The taxpayer operates a bar that contains 16 amusement devices. Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee in lieu of sales tax remitted from each device's revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator's failure either to buy the permits timely or display the decals which are evidence that the required fees have been paid. The code section is noted below, in pertinent part:

Amusement devices. (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices

which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices...

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees...

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code... (Idaho Code § 63-3623B. Emphasis added).

The Commission sent a permit renewal notification reminder letter to the taxpayer on May 9, 2009. On July 23, 2009, the Commission received an application and payment for the renewal of the 16 permits. As noted previously, the Commission subsequently issued a Notice for \$800, calculated as a \$50 penalty per permit for 16 permits.

Protest and Analysis

The taxpayer admits that he forgot to make application and payment on time and that he bought the permit decals almost three weeks after the July 1, 2009, deadline. However, he believes that the permit fee is in lieu of sales tax that would otherwise be collected and remitted throughout the use of the machines in the following year. Thus, he believes that he is late only for a short portion of the total. "...since the taxes on these devices is (sic) collected a year in

advance I was only late on 6% of the revenue actually due” (protest letter received October 13, 2009).

The taxpayer is correct that the permit fee is intended by the legislature to be in lieu of sales tax that would otherwise be collected and payable over a year’s time, from July 1 to June 30:

Owners and operators of coin or currency operated amusement devices are required to pay a permit fee for every such device in operation. At a tax rate of 5% this fee is thirty-five dollars (\$35). Section 63-3623B(c), Idaho Code, states that the fee may be increased proportionately to any increase in the tax rate (IDAPA 35.01.02.109.02.a).

Yet, as Idaho Code § 63-3623B, cited previously, reads in unambiguous language, the penalty provisions are clear and contain no provision for being prorated.

Further, the taxpayer states that a two-month reminder with no additional reminder gives small, cash-short businesses too much time to forget the deadline requirement.

Reminder notifications are not statutory. The Commission sends them as part of its compliance and enforcement activities. It believes that the renewal letters are sufficient for this purpose based on the high level of compliance experienced.

The taxpayer has not provided information to establish that the amount asserted is incorrect, but the Commission will exercise its discretion and reduce the penalty by half (Idaho Code § 63-3045).

WHEREFORE, the Notice of Deficiency Determination dated August 10, 2009, is hereby MODIFIED, and as MODIFIED is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED, and THIS DOES HEREBY ORDER, that the taxpayer pay the following penalty: \$400.

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.