

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22731
[Redacted]	)	
Petitioner.	)	
	)	DECISION
_____	)	

On December 30, 2009, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing sales and use tax, penalty, and interest for the period of January 1, 2006, through December 31, 2008, in the total amount of \$813,839.

On March 2, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on June 28, 2010.

The taxpayer is a private [Redacted] located on [Redacted]. The taxpayer is owned by [Redacted], which owns a related company [Redacted].

In 2005, the taxpayer entered into a contract called a “[Redacted]” with [Redacted]. Under the terms of this agreement, [Redacted] transferred the [Redacted] to the taxpayer. The taxpayer, in return, transferred [Redacted]. [Redacted] then took over the marketing and sales of [Redacted]. When [Redacted], it collected tax. The tax was reported on the taxpayer’s sales tax returns, which was incorrect, since the taxpayer did not actually sell the [Redacted]; however, the sale of [Redacted] is not at issue here.

Under the agreement, [Redacted] agreed to reimburse the taxpayer for any [Redacted] were sold. The taxpayer was not allowed to assess the members for any deficits. [Redacted] would have been entitled to any of the income if the [Redacted] had operated at a profit. From

2006 through 2008 the taxpayer incurred approximately \$10.5 million in operating losses. [Redacted].

Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act. Transactions that fall within this definition are taxable when the purchaser is the consumer. Included within this definition are fees charged for the “use of or the privilege of using tangible personal property or facilities for recreation.” See Idaho Code § 63-3612(2)(f).

The audit staff reasoned that [Redacted] paid the money to maintain the value of its [Redacted] inventory as well as the value of the [Redacted] as a whole. Therefore, the subsidies are constructive [Redacted].

In Crane Creek Country Club v. Idaho State Tax Commission, 122 Idaho 880, 841 P.2d 410, (1992), the Idaho Supreme Court held that a [Redacted].

The facts in this case are substantially different. The payments were made between two related business entities, not between the taxpayer and its [Redacted]. It is true that [Redacted] [Redacted] were allowed to use the course. They only did so when showing [Redacted]. Their use, therefore, was not [Redacted]. It was analogous to the use of a demonstrator vehicle by a motor vehicle dealer, which is also not taxable. For this reason, the Commission finds that the payments by [Redacted] to reimburse the taxpayer for operational losses were not taxable. The NODD will be modified in accordance with this decision.

The taxpayer has also objected to the 5 percent negligence penalty that was imposed only on the use tax portion of the NODD. Idaho Code § 63-3621 imposes a tax on the storage, use, or other consumption of tangible personal property in Idaho. Payment of sales tax to the vendor at the time of purchase extinguishes the use tax liability. The taxpayer employed a competent accounting staff, however, there were no consistent or proper accounting procedures in place to

flag for, accrue, or remit use tax. The comptroller attempted to accrue use tax, but failed to remit it. The Commission therefore believes that the failure to accrue and remit use tax was caused by the taxpayer's neglect and, therefore, the negligence penalty is appropriate.

WHEREFORE, the Notice of Deficiency Determination dated December 30, 2009, is hereby MODIFIED, and as MODIFIED, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$89,192	\$4,460	\$17,111	\$110,763

Interest is calculated through October 8, 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.

\_\_\_\_\_