

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted]) DOCKET NO. 22858
Petitioner.) DECISION
_____)

On March 9, 2010, 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, 2007, through December 31, 2009, in the total amount of \$13,759.

On May 1, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on July 7, 2010.

The taxpayer is a [Redacted] specializing in the [Redacted] of [Redacted]. During the audit period, the taxpayer incorrectly collected sales tax from its customers on sales of installed materials that became fixtures to real property.

Idaho Code § 63-3612 does not include sales of real property improvements within the definition of “sale.” Therefore, sales of real property improvements are not subject to Idaho state sales tax. Instead, Idaho Code § 63-3609 defines contractors improving real property as the consumers of the materials they install. For this reason, building contractors must pay sales or use tax on their purchase price of materials. They do not charge sales tax to their customers when they install such materials.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. Every state that imposes a sales tax also imposes a complementary use tax. Paying sales tax to the vendor of

tangible personal property extinguishes the use tax liability. The auditor in this case imposed use tax on the taxpayer's purchases of materials, because it did not pay tax to its vendors when it bought the materials.

Prior to October 1, 2008, the Commission frequently settled cases such as this one. Although the taxpayers were advised to start paying tax on their purchases of materials and stop charging sales tax to their customers, they seldom changed their procedures. For this reason, the Commission published the following notice in the June 2008 issue of the Commission's online newsletter, "Tax Update":

Beginning October 1, 2008, if a contractor charges sales tax on improvements to real property, the Tax Commission will no longer accept the sales tax collected from the customer as a substitute for the tax the contractor owes on the purchase of contract materials.

The auditor in this case imposed use tax on all purchases of materials made on or after October 1, 2008. The taxpayer argues that the tax it collected and remitted should be used to offset the use tax it should have paid on its material purchases. The taxpayer did not actually pay that tax, however, its customers did. The incorrectly collected sales tax, therefore, cannot be used to offset its use tax liability.

The taxpayer also argues that it was advised by its CPA that it qualified for the production exemption provided by Idaho Code § 63-3622D. That statute exempts purchases of material and equipment that is directly used in manufacturing property that is intended for ultimate sale at retail. Since the taxpayer is primarily in the business of improving real property, the materials it sold were not sold at retail. The exemption, therefore, does not apply to the taxpayer's equipment purchases.

WHEREFORE, the Notice of Deficiency Determination dated March 9, 2010, 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>
\$11,819	\$578	\$1,531	\$13,928

Interest is calculated through January 31, 2011, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid. Credit has been given for a \$250 pre-payment

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] Copy Mailed to:

Receipt No.

[Redacted]
