

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED],) DOCKET NO. 23160
)
)
Petitioner.) DECISION
)
_____)

On June 17, 2010, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to Total Service Inc. of Idaho (Taxpayer) asserting an [Redacted] and penalty totaling \$92 for the period July 1, 2009, through June 30, 2010.

The taxpayer protested the [Redacted] and penalty in a letter received July 7, 2010. The Commission held a hearing at the taxpayer’s request on October 29, 2010.

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 owns amusement devices located at various Idaho business locations. Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee (aka decal fee or tax) 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 that are evidence the required fees have been paid. In May 2010, the Bureau found that one of the Taxpayer’s amusement devices did not have a decal. Accordingly, the Bureau sent a Notice for the decal fee and penalty.

The relevant code section is noted below:

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.

(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty five dollars (\$35.00) for each such device. [N.B. The fee is currently \$42]

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device. Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases.

(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.

(2) A person who knowingly secures or attempts to secure an amusement device permit sticker under this section by fraud, misrepresentation, or subterfuge or uses any permit issued under this section in a fraudulent manner shall be subject to a penalty of up to twenty five thousand dollars (\$25,000).

(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.

(h) The commission may revoke all permits of any person who operates any amusement device without complying with the provisions of this section. Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63 3629, Idaho Code, which shall be subject to review as provided in section 63 3631, Idaho Code.

(i) Permits issued under this section are transferable to another person only after written notice of the transfer is given to the state tax commission. (Idaho Code § 63-3623B. Emphasis added.)

Protest and Analysis

The Taxpayer says that at the request of an Idaho customer he placed a machine in service during May 2010. He objected to paying the full \$42 fee for a time period that would expire on June 30, 2010. In his experience with other state's taxing jurisdictions, the Taxpayer notes that there are either one-year registrations that commence when the decal is purchased or that the fee is prorated for the remaining valid time period.

However, as the previously cited Idaho Code § 63-3623B reads in unambiguous language, the decal fee and penalty provisions are clear and contain no provision for being prorated. The requirements rest in the hands of the state legislature, and the Commission's role is administration and enforcement.

The Taxpayer has not provided information to establish that the amount asserted is incorrect, but the Commission will exercise its discretion and abate the penalty (Idaho Code § 63-3046).

WHEREFORE, the Notice of Deficiency Determination dated June 17, 2010, 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 tax: \$42.

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.