

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21659
[Redacted],)	
)	
Petitioner.)	DECISION
)	
_____)	

On November 21, 2008, 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 period May 1, 2008, through May 31, 2008, in the total amount of \$18,726.

On January 5, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission, having reviewed the audit file and subsequent information, hereby dismisses the liability for the following reasons.

BACKGROUND

The taxpayer is an Idaho non-profit volunteer association organized to assist the activities offered at one particular public high school in this state. Through donations and a bank loan, the taxpayer bought [Redacted]. Therefore, the taxpayer bought [Redacted] without paying sales tax. Following the purchase, the taxpayer did not pay use tax to the state. Bureau staff held the May 2008 purchase [Redacted] subject to use tax.

The Bureau's early understanding of the facts led it to believe that [Redacted]. As it was believed to remain tangible personal property rather than become an improvement to real property, the Bureau believed it was a purchase subject to tax.

Subsequently, the Bureau learned that [Redacted].

[Redacted].

APPLICABLE TAX STATUTES

The Idaho Sales Tax Act imposes two taxes, a sales tax (Idaho Code, 63-3612(1)) and a use tax. Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax rate is the same as the sales tax rate. The use tax only applies when a consumer purchases goods and does not pay sales tax to the seller at the time of purchase. Every state that imposes a sales tax also imposes a complementary use tax.

Under the facts known at the time, the vendor was located out-of-state and had no known physical or other business presence in Idaho. It was not registered to collect sales tax on sales made into this state nor was it required to do so (Idaho Code § 63-3611).

While in general there is a tax obligation on sales and purchases, there are exceptions. [Redacted] can make tax-free purchases, and other specifically enumerated entities and entity classes can make exempt purchases as well (Idaho Code § 63-3622O).

The following exemption is relevant to this case.

The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person (Idaho Code § 63-3621(m)).

TAXPAYER'S PROTEST

The taxpayer believed that the vendor's quoted price included applicable taxes. As an alternative theory, the taxpayer believed that since it was donating [Redacted], a government entity, no tax would be due.

ANALYSIS AND CONCLUSION

The Commission agrees with the latter theory, although not for the reasons the taxpayer contemplated. The taxpayer does not qualify for an exemption as a tax-exempt entity under the provisions of Idaho Code § 63-3622O. Further, its donation of tangible personal property to the school, a tax-exempt government entity, does not necessarily establish an exemption from tax. There is no basis in the law for the taxpayer's conclusion that tangible personal property donated to a public school relieves the donor of the tax obligation.

However, an exemption from use tax for tangible personal property donated to the state of Idaho or any political subdivision of the state applies if the property is incorporated into realty (Idaho Code § 63-3621(m)).

The Commission concludes that time and observation has proven [Redacted] to be annexed to realty. [Redacted].

While the Commission concludes that [Redacted] was used to improve or alter realty and that the conditions of the exemption statute, Idaho Code § 63-3621(m), were met, the following suppositions are essential to the exemption.

Idaho Code § 63-3621(m) is a use tax exemption, rather than a sales tax exemption. Had the taxpayer purchased [Redacted] from an Idaho registered retailer, it would have owed sales tax to the seller, despite its donative intent. At the time of the purchase, there were no facts in evidence to suggest that the vendor should have been an Idaho registered seller.

Further, had the taxpayer hired a contractor both to supply and [Redacted] the contractor would have been taxable under the following statute:

The exemptions granted by subsection (1) of this section do not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63 3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract (Idaho Code § 63-3622O(4)).

Since the taxpayer bought and donated [Redacted] and it was incorporated into real property, the exemption statute, Idaho Code § 63-3621(m), applies.

WHEREFORE, the Notice of Deficiency Determination dated November 21, 2008, is hereby DISMISSED, in accordance with the provisions of this decision and, as so DISMISSED, is AFFIRMED and MADE FINAL.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.
