

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22041
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On April 10, 2009, the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination (Notice) to [Redacted] (taxpayer). The Bureau denied the taxpayer's entire refund claim in the amount of \$6,772.60 for taxable periods December 2005 through January 2008. The taxpayer filed a timely appeal and petition for redetermination on June 10, 2009, and requested an informal conference which was held on November 9, 2009.

The Commission, having reviewed the audit file and considered the information obtained at the informal hearing, hereby upholds the findings for the following reasons.

Idaho Code § 63-3626(b)(1) allows a written refund claim to be filed with the Commission if sales tax has been paid in error. In January 2009, the taxpayer submitted such a claim using Form TCR, Sales Tax Refund Claim, requesting a refund of sales tax paid to vendors on purchases of real property improvements.

Before reviewing the claim, the Bureau instructed the taxpayer to first request the tax refund from the vendors. If the vendors refused to issue the refund, the taxpayer was asked to provide evidence of this refusal. This request was made in accordance with IDAPA 35.01.02.117.02. Until this evidence was provided, the Bureau could not complete their review of the claim.

The taxpayer did not respond for several months, so the Bureau issued the Notice denying the entire refund claim for lack of evidence of the vendor's refusal to refund the tax. The denial did not discuss any additional legal issues, such as the validity of the claim; without the requested evidence, the Bureau undertook no further review.

The taxpayer protested the applicability of the requirement to return to the vendor first. The taxpayer cited Idaho Code § 63-3623A that "[a]ll moneys collected by retailers...shall, immediately upon collection, be state money." Since the collected tax was correctly remitted to the state, the taxpayer asserted that the money could not be refunded by the vendor.

This issue was discussed in the hearing, and the taxpayer agreed to return to the vendor to request the refund. In return, the Commission promised to complete the review of the claim if evidence could be shown that the vendor refused the taxpayer's request. Nine months later, the taxpayer explained that both vendors had refused to refund the tax. The Commission accepted this information as full compliance and undertook a full review of the claim.

In reviewing the claim, the Commission discovered that the taxpayer had never provided appropriate supporting documentation to justify the amount of the claim. The Commission contacted the taxpayer's representative and requested a small sample of purchase invoices as evidence of sales tax incorrectly paid to a vendor. This request was repeated several times over a period of four months. The taxpayer did not provide the documentation as requested.

The taxpayer has not provided the Commission with documentation to establish that the amount asserted in the Notice is incorrect. A determination of the State Tax Commission is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986); Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814,

683 P.2d 846, 850 (1984). In the absence of contrary information, the auditor's findings are presumed to be reasonably accurate.

THEREFORE, the Notice of Deficiency Determination dated April 10, 2009, and directed to [Redacted], is AFFIRMED.

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.