

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22189
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On June 19, 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 \$1,580 for taxable period July 2006. The taxpayer filed a timely appeal and petition for redetermination on August 19, 2009, and requested an informal conference which was held on November 19, 2009.

The Commission, having reviewed the audit file, considered the information obtained at the informal hearing, and examined the documentation submitted in the months following the hearing, hereby modifies 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 February 2009, the taxpayer submitted such a claim using a 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 go and 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 completed a full review of the claim.

Idaho Code § 63-3619 imposes a sales tax on "retail sales" only. Idaho Code § 63-3609 defines retail sale as "a sale for any purpose other than resale in the regular course of business." Idaho Code § 63-3612 limits the definition of "sale" to sales of tangible personal property and certain enumerated services. The sale of real property is excluded from the definition; thus, it is not subject to sales tax. If sales tax is paid on the purchase of real property, a refund can be claimed.

With all other requirements met, the Commission reviewed the taxpayer's claim that sales tax had been incorrectly paid on the purchase of real property. In reviewing the claim, the Commission agreed with the taxpayer's claims for all transactions except one.

In July 2006, the taxpayer purchased [Redacted] from its vendor. The work was to be completed in a retail store owned by the taxpayer's customer. Idaho Sales Tax Rule 067.06 (IDAPA 35.01.02.067.06) states:

**06. Store Fixtures.** Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term "store fixtures" includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: (5-8-09)

**a.** It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or (5-8-09)

**b.** It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. (5-8-09)

Though the rule quoted was not in effect at the time of purchase, the codification of the rule was the implementation of the Commission's long held interpretation of the real property Sales Tax Rule 067.02 (IDAPA 35.01.02.067.02):

**02. Three Factor Test.** A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)

**a.** Annexation to the realty, either actual or constructive.

**b.** Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)

**c.** Intention to make the article a permanent addition to the realty. (7-1-93)

The Commission has traditionally treated store fixtures as tangible personal property based on both the first and second part of the three factor test.

Based on the taxpayer's description of the invoice and the limited information available on the invoice itself, the Commission concluded that the [Redacted] to serve the purpose of the retailer rather than the building itself and, therefore, retain the characteristics of tangible personal property rather than become realty. Based on this conclusion, the taxpayer appropriately paid sales tax on a purchase of tangible personal property.

The Commission advised the taxpayer's representative in writing of its opinion of the [Redacted]. The letter gave the taxpayer a deadline for responding if there was disagreement. In the letter, the Commission emphasized that part of the refund could remain denied if no answer was forthcoming. The Commission did not receive a response to the inquiry.

THEREFORE, the Notice of Deficiency Determination dated June 19, 2009, and directed to [Redacted], is AFFIRMED AS MODIFIED by this decision.

IT IS ORDERED that the taxpayer receive a refund of the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
(\$693)	(\$201)	(\$894)

Interest is calculated through July 29, 2011, and will continue to accrue until the refund has been issued.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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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.

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