

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22967
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	
	)	

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On March 31, 2010, the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer). The Notice proposed additional use tax, penalty, and interest in the total amount of \$17,758 for taxable period September 1, 2006, through August 31, 2009. The taxpayer filed a timely appeal and petition for redetermination on June 1, 2010, and requested an informal conference, which was held on May 5, 2011.

The Commission, having reviewed the audit file and considered the information obtained at the informal conference, upholds the audit findings as explained below.

The taxpayer operates an [Redacted] business in the [Redacted] region of Idaho. In addition to providing meals, the taxpayer also offers related services such as a full-service [Redacted]. The customer is billed for the meal along with a separately stated service charge for any additional services provided with the meal.

In the course of a routine sales and use tax audit, the Bureau discovered that the taxpayer was not charging sales tax on the service charge portion of each transaction. The Bureau held these charges subject to sales tax based on the following Rule:

**05. Service Charges.** Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, must be included in the purchase price subject to tax... (IDAPA 35.01.02.43.05)

The taxation of these service charges is the only issue protested by the taxpayer.

In his protest, the taxpayer makes the assertion that the service charge is not an additional cost associated with the food, but rather a charge for the nontaxable services of “independent contractors” hired by the taxpayer. The taxpayer believes that he provides these “independent contractors” as a courtesy to the customer and the combined billing relieves the customer of the burden of hiring and paying multiple parties. The taxpayer agrees that the customer pays for services in addition to the catered meal; however, he believes it should be treated differently because most of the charge is passed through to the service providers.

Idaho Code § 63-3619 imposes a sales tax on every retail sale. This tax applies to the sale of tangible personal property and other sales specifically included by law. The statutory definition of a sale contains the relevant inclusion:

63-3612. Sale.

...(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

...(b) Furnishing, preparing, or serving food, meals, or drinks and nondepreciable goods and **services directly consumed by customers included in the charge thereof.** (Emphasis added. Idaho Code § 63-3612(2)(b)).

Based on this law and IDAPA 35.01.02.43.05 quoted above, the charges for catered meals and associated services have long been included in the taxable sales price by the Commission. The only consistent exclusion has been voluntary gratuities which are specifically exempted by Administrative Rule. This treatment is analogous to a restaurant meal in which the entire charge is subject to sales tax despite some portion of the charge that is attributable to other services provided such as the waitstaff, management, and valet parking.

The definition of a sale makes no exception for particular payment arrangements between the caterer and hired service providers, whether they are employees or independent contractors. The Commission concedes that in an alternative scenario in which the individual service

providers were hired and paid by the customer separately, most, and perhaps all, of the services would not be taxable. However, in this case, the sale of the meal and related services was billed by a single entity, the taxpayer, and thus all charges must be included as part of the taxable sale.

Finally, the Commission approves of the Bureau's imposition of interest as appropriate per Idaho Code § 63-3045(6). Under the authority of Idaho Code § 63-3047, the Commission removes the imposed negligence penalty.

THEREFORE, the Notice of Deficiency Determination dated March 31, 2010, and directed to [Redacted], is AFFIRMED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$14,930	\$0	\$3,063	\$18,740

Interest is calculated through November 30, 2011, and will continue to accrue until the entire liability has been paid.

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 \_\_\_\_\_ 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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