

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23159
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On June 11, 2010, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing sales and use tax, penalty, and interest for the period of January 1, 2007, through December 31, 2009, in the total amount of \$1,902.

On July 16, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on October 13, 2010.

The taxpayer is in the business of selling and installing [Redacted]. During the audit period, the taxpayer charged sales tax to its customers on all [Redacted] that the taxpayer installed into residential real property.

Idaho Code § 63-3612 does not include sales of real property improvements within the definition of “sale.” Therefore, sales of real property improvements are not subject to Idaho state sales tax. Instead, Idaho Code § 63-3609 defines contractors improving real property as the consumers of the materials they install. For this reason, building contractors must pay sales or use tax on their purchase price of materials. They do not charge sales tax to their customers when they install such materials.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. Every state that imposes a sales tax also imposes a complementary use tax. Paying sales tax to the vendor of

tangible personal property extinguishes the use tax liability. The auditor, in this case, imposed use tax on the taxpayer's materials purchases, because it did not pay tax to its vendors when it bought the materials. The issue, therefore, is whether the [Redacted] became fixtures to real estate or retained the characteristics of personal property.

Idaho Sales Tax Rule 067 (IDAPA 35.01.02.067) states the common law, three factor test that is used to determine whether an item has become a permanent fixture to realty. The three factors are: annexation to the realty, either actual or constructive; adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable; and finally, the intention to make the article a permanent part addition to the realty.

The taxpayer argues that the softeners remained personal property and, therefore, its sales were retail sales and were properly taxed. In support of its argument, the taxpayer points out that the [Redacted]. [Redacted]. The taxpayer stated that the installation time is usually from one and a half to two hours. [Redacted].

The softeners, in this case, are [Redacted]. They are also adapted to the use of the building as a residence. It is often difficult to determine the intent of the parties when items are affixed to real estate, however. This makes it very difficult for contractors to know whether they

should treat a sale as a retail sale or improvement to realty. To maintain consistent treatment, the Commission has promulgated Idaho Sales Tax Rule 014.05 (IDAPA 35.01.02.014.05), which states:

05. Tangible Personal Property vs. Improvements to Real Property. Built-in appliances and related items become fixtures to realty when installed in residential buildings. Such built-in appliances include dishwashers, microwave ovens, stove tops, refrigerators, stove hoods, central vacuum systems, waste disposal units, trash compactors, *water softeners*, water purification systems, and garage door openers. Some appliances retain the character of personal property such as microwave ovens that are not built-in, freestanding stoves, refrigerators, washers, and dryers. Other rules may apply to commercial, industrial, and other non-residential buildings. See Rule 067 of these rules. (Emphasis added.)

Therefore, [Redacted], by rule, are presumed to be real property.

The taxpayer cites the case of Merris v. Ada County, 100 Idaho 59, 593 P.2d 394, (1979), in support of its position. Merris was a property tax case in which the value of [Redacted] was at issue. It is true that the taxpayer in that case treated the [Redacted] as personal property; however, the nature of the property did not affect the tax liability. The Merris Court did not discuss the distinction between real and personal property.

On the other hand, the Utah Supreme Court held the opposite in the case of Superior Soft Water Company v. Utah State Tax Commission, 843 P.2d 525 (1992). This was a sales tax case that also involved leases of [Redacted]. The issue was whether the [Redacted] were personal property, in which case the lease payments would be taxable, or real property. The Utah Tax Commission conceded that water softeners were real property improvements. The Court held that leasing the [Redacted] did not change their nature as fixtures.

In summary, [Redacted], by rule, are presumed to be real property. The taxpayer has failed to meet the burden of proving that they are not.

WHEREFORE, the Notice of Deficiency Determination dated June 11, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,715	\$86	\$140	\$1,941

Interest is calculated through January 31, 2011, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until 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 _____ 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.
