

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23396
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On December 12, 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 sales tax, use tax, penalty, and interest for the period January 1, 2005, through December 31, 2007, in the total amount of \$97,244.

In a letter dated February 5, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer, at its request, on March 21, 2011. Having reviewed the file, the letter of protest, and the information obtained at the hearing, the Commission hereby upholds the auditor's findings for a modified amount for the following reasons.

Background and Audit Findings

The taxpayer, a sole proprietor for part of the audit period and later an S-Corp, has been dissolved. The auditor characterized the business as "[Redacted]" with sales of [Redacted]. It had a seller's permit during the audit period and remitted sales tax it collected.

Prior to the informal hearing with the Commission, the taxpayer provided additional documentation that, upon review by the auditor, reduced the liability. That reduction is accounted for in this decision.

Missing sales documentation still accounts for part of the existing deficiency, presumed by the auditor to be sales for which no tax was collected or for which tax was collected but not remitted. The auditor believes that the majority of untaxed sales held in the audit findings are for materials that the taxpayer removed from construction sites and later sold to other contractors. In addition, the auditor scheduled numerous untaxed purchases due to lack of documentation.

The existing business records did not lend themselves to making an accurate assessment of the liability. Some of the sales documentation doesn't contain detail from which to determine what amounts might be taxable. For example, there are documents that have undifferentiated dollar amounts the auditor reasonably believes include both hauling charges and the sales price of materials. For some of these, the taxpayer insists that the hauled materials have no value and the charge is entirely for freight. Yet, some customers wanted the material, so the auditor believed the taxpayer should have made a reasonable allocation between freight and the sales price of the goods. Additionally, or perhaps alternatively, the auditor believed there should be descriptions on the invoices that prove the taxpayer's contention.

The taxpayer promised to follow-up the hearing with additional documentation in its favor. The Commission sent a reminder letter on March 23, 2011. As of the date of this decision, however, there has been no response.

Taxpayer's Protest Letter

The taxpayer believes that many sales held taxable include an undifferentiated product and delivery charge, thus overstating the amount taxable. He states that the majority of [Redacted] sales are for delivery only, as he retrieved this material from jobsites where he was "asked to remove materials" that "had no associated cost," as stated in his protest letter of February 5, 2009.

Analysis and Conclusion

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies (Idaho Code § 63-3619). The purchase of tangible personal property is subject to use tax unless a sales tax has been rightly paid to the vendor or an exemption applies (Idaho Code § 63-3621).

Among the exemptions from tax that exist in the statutes, there is an exemption from the sales price subject to tax for separately stated freight charges to the buyer (Idaho Code § 63-3613(b)7). However, it is established by administrative rule that invoices with no differentiation between taxable amounts and non-taxable amounts, such as delivery to the buyer, must be held taxable in the entirety (IDAPA 35.01.02.061.02).

Retailers are required to keep records that are complete and in a manner that is conducive to review by Commission auditors.

Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction (Idaho Code § 63-3624(c); see also, in general, IDAPA 35.01.01.111)

Although the taxpayer said that documents on behalf of its protest were forthcoming, the Commission has not received anything and issues this decision because no alternative outcome is available. The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice is incorrect. As a result, the Commission will uphold the Notice for the period January 1, 2005, through December 31, 2007.

A determination of the State Tax Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984), 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 Ct. App. 1986).

The Bureau's imposition of interest and penalty are appropriate per Idaho Code §§ 63-3045(6) and 63-3046(c) and (g). Interest is accrued through November 1, 2011. It continues to accrue until the tax liability is paid.

THEREFORE, the Notice of Deficiency Determination dated December 12, 2008, is MODIFIED and as MODIFIED 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>
\$42,878	\$2,144	\$ 12,785	\$ 57,807

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

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.
