

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23439
[Redacted])	
Petitioner.)	
)	DECISION
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On August 4, 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 and interest for the period of January 1, 2006, through December 31, 2009, in the total amount of \$361,596. On the same day, the Commission also issued an NODD proposing travel and convention tax and interest in the amount of \$1,029.

On September 22, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on December 10, 2010.

[Redacted].

Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act. Charging for the use or privilege of using a facility or tangible personal property for a recreational purpose is included within this definition. Providing hotel, motel, or campground lodging is also included within the statutory definition of “sale.” Therefore, [Redacted]. Therefore, all the taxpayer’s sales were held taxable.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. Payment of sales tax to a vendor extinguishes the use tax liability. Therefore, purchases subject to use tax are only taxable when the purchaser buys goods without paying tax to the seller at the time of sale. In this case, all of the taxpayer’s purchases of

tangible personal property were held taxable, including [Redacted]. The taxpayer's only objection in this case is the imposition of use tax on these two classes of purchases.

[Redacted].

Idaho Code § 63-3622D, commonly known as the production exemption, provides an exemption for purchases of equipment and supplies directly used in a ranching operation. Because of this exemption, ranchers can purchase animal feed exempt from sales or use tax. However, the taxpayer, in this case, is not engaged exclusively in the business of ranching.

The Commission believes that the taxpayer is involved in two distinct activities. Foremost, with respect to the audit findings, it provides a taxable recreational event. Secondly, it operates a [Redacted]. However, the Commission concludes that the taxpayer has not met the statutory requirements necessary to claim the production exemption:

... the exemptions allowed ... are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state (Idaho Code § 63-3622D(b); excerpted in relevant part).

Since the taxpayer is predominantly in the business of providing recreation and secondarily of selling [Redacted], qualifying for the production exemption requires a separately operated business segment relative to the [Redacted] and other essential activities. Sales Tax Administrative Rule 079 defines what constitutes a separately operated business segment:

For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment (IDAPA 35.01.02.079.02.a).

The auditor found no indication that there was a demarcation in the business records to account for the separate enterprises. There were no separate ledgers or journals distinguishing [Redacted] sales from providing the recreational event. The customer invoices did not segregate

the elk sale from the sale of recreation. Booked revenue was not segregated between the recreational event and the sale of [Redacted]. There were no journals dedicated to the purchase of food or other necessities for [Redacted]. Staff appeared to work as needed rather than to have duties assigned to one business function or the other.

The primary effect of this determination is to disqualify the taxpayer from claiming the production exemption on its purchases of animal feed. The feed is consumed by the animals; it is not sold to [Redacted]. The purchases of animal feed are, therefore, taxable. The Commission notes, however, that the taxpayer could, in the future, structure its business to qualify for the production exemption.

The amount owed is credited for a prepayment made by the taxpayer.

WHEREFORE, the Notice of Deficiency Determination dated August 4, 2010, is MODIFIED, and as MODIFIED, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pays the following tax and interest:

	Adjusted Tax	237,675		
(to 10/06/2010, per Notice)	Interest	30,047		
(adjustment per Decision)	Total Due	<u>267,722</u>		
(10/07/2010 to 01/06/2011)	Accrued Interest	2,956		
	Sub-total		270,678	
(01/06/2011)	Less Pre-payment *		(100,000)	
	Remaining tax due		<u>170,678</u>	
(01/07/2011 - 07/31/2011)	Accrued Interest		3,853	
	Remaining Tax and Interest			\$ 174,531
*Prepayment is first applied to interest due, per IDAPA 35.02.01.140.01				

Interest is calculated through July 31, 2011, and will continue to accrue on unpaid tax 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 _____ 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.