

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22235
[Redacted])	
Petitioner.)	
)	DECISION
_____)	

On July 8, 2009, 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, and interest for the period July 1, 2004, through June 30, 2007, in the total amount of \$224,296. For the reasons that follow, the Commission upholds the audit findings.

On September 8, 2009, the taxpayer filed a timely appeal and petition for redetermination of the Notice. The Commission replied on May 21, 2010, with a standard hearing rights letter, to which the taxpayer replied on June 18, 2010, with a request for a hearing. On April 12, 2011, the Commission responded again with apologies for the delay. On May 11, 2011, after a telephone conversation with the taxpayer and upon request, the Commission sent audit workpapers to the taxpayer. As the taxpayer indicated that there was a bankruptcy proceeding that could preclude the Commission from collecting on any liability, the Commission suggested that the taxpayer provide such proof under the assumption that there would be no need to discuss the substantive issues of the Notice if collection would be barred. No response was received, and the Commission sent another letter on December 1, 2011.

After another conversation with the taxpayer on December 12, 2011, the taxpayer replied by letter, with reference to Idaho Code § 63-3045B, stating that:

..your office received a request to obtain a final decision of the tax commission and took no action for well over 180 days. Therefore, it appears that the subject

Notice of Deficiency Determination is by operation of law null and void abo initio, with prejudice, and this matter should be closed (letter dated February 10, 2012).

The Commission disagreed with the taxpayer's conclusion in a letter dated February 14, 2012, and repeats its position here. Although there have been delays, no hearing was held, and there was no written request for a decision. Rather, the taxpayer requested a hearing in its June 18, 2010, letter, which is a standard reply following receipt of a Notice. The letter began, "We would like to schedule a hearing before a Commissioner or designee at the offices of the ISTC [Idaho State Tax Commission]."

A decision and a hearing have specific and separate meanings in the relevant statute.

Final decisions of the commission.....

(3) When a perfected protest has been filed, the state tax commission shall, within fourteen (14) days thereof, provide the taxpayer with a written acknowledgement of the protest. After the acknowledgement, **a final decision of the tax commission must be rendered within one hundred eighty (180) days from either:**

(a) **A request in writing**, in a form prescribed by rules of the tax commission, from the taxpayer for a final decision on that issue; ...

(b) **The conclusion of any hearing pursuant to section 63-3045(2)**, Idaho Code, and the taxpayer has not requested or received any extension of time to present additional evidence or testimony...

(5) **If a final decision of the tax commission is not rendered or the protest is not resolved** by compromise, consent or withdrawal of the notice of deficiency determination within the time limits established by subsection (3) of this section, **the notice of deficiency shall be null and void ab initio, with prejudice.**

(6) A final decision of the tax commission shall be issued in writing and mailed or served upon the taxpayer within the time limits set forth herein... (Idaho Code § 63-3045B, excerpted in relevant part; emphasis added.)

In the final letter to the taxpayer, the Commission once again extended the opportunity for a hearing.

The taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the Notice. 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.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the taxpayer's sales and use tax liability for the period July 1, 2004, through June 30, 2007

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through June 30, 2012, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated July 8, 2009 is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u> \$185,201	<u>INTEREST</u> \$62,314	<u>TOTAL</u> \$247,515
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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 _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, 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.
