

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22887
[Redacted])	
)	
Petitioner.)	DECISION
_____)	

On March 25, 2010, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer) proposing use tax, penalty, and interest for the period April 1, 2006, through December 31, 2008, in the total amount of \$106,988. For the reasons that follow, the Commission modifies the audit findings.

On May 11, 2010, the taxpayer filed a timely appeal and petition for redetermination of the Notice stating that it disagreed with the findings. At the taxpayer’s request, a hearing was held on December 5, 2011.

Audit Findings and Relevant Tax Law

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax. If sales tax cannot or is not paid to the vendor, the buyer owes a use tax to the state. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621). The auditor found that the taxpayer made several purchases for which no tax was paid.

The largest liability is associated with the purchase of [Redacted] used by the taxpayer in [Redacted]. The taxpayer claimed that the [Redacted] would eventually be resold and, therefore, did not pay sales tax to the retailer upon purchase or use tax to Idaho. Purchases made for the purpose of resale are excluded from the definition of retail sale and are not taxable (Idaho Code § 63-3609).

Since the primary use of the [Redacted], the auditor imposed a tax. Although there are some tax exemptions for the purchase of [Redacted], there is no exemption for [Redacted] (Idaho Code §§ 63-3622GG and 63-3622D(g)(7); IDAPA 35.01.02.037.05). The auditor imposed tax on the fair market value of the [Redacted] because the taxpayer did not provide an invoice for the purchase to establish the amount taxable. (Idaho Code § 63-3621 and IDAPA 35.01.02. 072.01).

Following the informal hearing, the taxpayer provided the invoice. It reflects a trade-in of another [Redacted] as part of the purchase transaction. Amounts allowed on merchandise accepted in payment of other merchandise are to be subtracted before calculating sales tax (Idaho Code § 63-3613(b)(2)). Therefore, the price subject to tax is lower than the amount held taxable by the auditor, and the revised amount in the taxpayer's favor is reflected in this decision. Other purchases subject to tax were not contested.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, and found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046. The penalty is 5 percent of the entire tax and is imposed for negligence of the applicable tax laws regarding resale inventory and [Redacted].

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau and as modified in this decision to be a reasonably accurate representation of the taxpayer's use tax liability for the period April 1, 2006, through December 31, 2008.

THEREFORE, the Notice of Deficiency Determination dated March 25, 2010, is hereby MODIFIED and 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, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$35,211	\$1,761	\$6,016	\$42,988
		Less payments	<35,211>
		Total Due	<u>\$ 7,777</u>

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.
