

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

|                                 |   |                    |
|---------------------------------|---|--------------------|
| In the Matter of the Protest of | ) |                    |
|                                 | ) | DOCKET NO. 23276TC |
| [Redacted],                     | ) |                    |
|                                 | ) |                    |
| Petitioner.                     | ) | DECISION           |
|                                 | ) |                    |
| _____                           | ) |                    |

On June 18, 2010, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer). The Notice proposed additional travel and convention tax, penalty, and interest in the total amount of \$195 for taxable periods May 2007 through November 2009.

The taxpayer filed a timely appeal and petition for redetermination on August 19, 2010. The taxpayer also requested an informal hearing with the Commission to discuss his case. In more than fourteen months of regular correspondence by phone and letter, a hearing date could not be arranged. The Commission may move forward with a decision when a hearing cannot be scheduled (IDAPA 35.02.01.325.08.b):

**08. Failure to Schedule a Hearing.** The Tax Commission may issue a decision after forty-two (42) days from the date the notification of right to request a hearing is mailed to the taxpayer; if

...b. The taxpayer requests a hearing but does not schedule a date for the hearing

The Commission, having reviewed the audit file, upholds the audit findings as explained below.

The taxpayer protested the Bureau’s imposition of tax on nontaxed sales of [Redacted]; he agreed with the remainder of the liability. The Bureau held these nontaxed sales subject to tax because there was no valid exemption claim available to the purchasers. The taxpayer argued

that he did not receive notification from the Commission that he was improperly making nontaxed sales until the time of the audit. Prior to that notification, he felt that the responsibility for the error should rest with the Commission and that he should not be responsible for the previous liability.

Idaho Code § 67-4718 imposes a tax on all “sales as defined in section 67-4711, Idaho Code.” This tax is commonly called the travel and convention tax. The term “sale” is specially defined for purposes of this tax to include “the renting of a place to sleep, to an individual by a...motel...for a period of less than thirty-one (31) continuous days” (Idaho Code § 67-4711(7)). By rule, the travel and convention tax substantially adopts the same exemption system as the sales and use tax (IDAPA 35.01.06.016.01):

**01. Exemptions.** Except as otherwise provided in this rule, all charges for room occupancy which are exempt from Idaho sales tax are also exempt from the room sales tax.

Without a valid exemption claim and proper documentation to support the claim, all sales in Idaho are subject to sales tax:

63-3622. Exemptions -- Exemption and resale certificates -- Penalties. (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

This presumption applies similarly to the travel and convention tax. In the course of the audit, the Bureau discovered that the taxpayer had not obtained any exemption certificates supporting the nontaxed sales. All of the nontaxed sales were made to members of the military and their families. Therefore, the lack of documentation is irrelevant as there is no exemption available to members of the military on personal business paying for [Redacted] with their own funds.

The Commission makes a reasonable effort to educate taxpayers on the tax law, but the Commission could not have known of the taxpayer’s errors based solely on the sales tax return.

There is no statute or rule that absolves a taxpayer from the responsibility of collecting sales tax on retail sales in the state without a valid exemption claim supported by proper documentation. In the transactions at issue, the taxpayer's customers did not make valid exemption claims as they had no exemption available to them. The Commission agrees with the Bureau's imposition of sales tax on these transactions.

The taxpayer has not provided the Commission with further legal or factual information to establish that the amount asserted in the Notice is incorrect. 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 in question.

Finally, the Commission approves of the Bureau's imposition of interest as appropriate per Idaho Code § 63-3045(6).

THEREFORE, the Notice for travel and convention tax dated June 18, 2010, and directed to [Redacted] is AFFIRMED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax and interest:

| <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|------------|-----------------|--------------|
| \$173      | \$35            | \$208        |

Interest is calculated through May 31, 2012, and will continue to accrue until the entire liability has been 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 \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

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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.