

A hearing rights letter was sent to [Redacted] on January 3, 2012, but the Tax Commission has had no further communication with [Redacted] and now moves forward with this decision.

DISCUSSION

Real property contractors pay sales tax on materials they use, pursuant to Idaho Code § 63-3609(a), but real property contracts are not taxable retail sales because they are not defined as such in Idaho Code § 63-3612. Therefore, a contractor does not pay sales tax to its sub-contractors performing work on real property. The subcontractor pays sales tax on the materials used in its own work.

Should sales tax be paid in error, a claim may be filed with the Tax Commission requesting a refund of the mistakenly paid tax. Idaho Sales & Use Tax Administrative Rule 117 governs sales tax refund claims and says, in pertinent part:

117. REFUND CLAIMS (RULE 117).

02. Payment of Sales Tax by a Purchaser to a Vendor. When a purchaser has paid sales tax to a vendor, and later determines that the sales tax was paid in error, the purchaser shall request the refund from the vendor to whom the excess tax was paid. If the purchaser can provide evidence that the vendor has refused to refund the tax, he may then file a claim for refund directly with the Tax Commission. (7-1-93)

Pursuant to Rule 117, requesting a refund from a vendor who was paid sales tax in error is a prerequisite for directly filing a claim for the tax with the Tax Commission. Rule 117 legally controls the administrative process involved in sales tax refund claims, provides vendors the opportunity to correct mistakes and educate themselves on the applicable sales tax law, and helps the Tax Commission identify vendors that do not conform to sales tax law. *Jeppson v. Idaho State Tax Commission*, No. CVOC 0911660, Slip Op. at 10 (4th Jud. Dist. Id. Dec. 28, 2009).

[Redacted] filed a sales tax refund claim but provided no evidence to the Tax Commission that the Company's subcontractors refused to refund sales tax payments they received. In fact, there is no evidence of an attempt to contact the subcontractors involved in the tax refund claim.

CONCLUSION

A determination issued by the Tax Commission is presumed to be correct, and the burden is on the taxpayer to show that it is erroneous. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986).

The information submitted by [Redacted] in support of its protest has been reviewed. [Redacted] has failed to present any legal or factual information to dispute the basis of the Determination, and therefore failed to meet its burden to show that the Determination is incorrect. Because [Redacted] failed to follow Idaho Sales & Use Tax Administrative Rule 117 when filing its sales tax refund claim, no refund can be issued.

WHEREFORE, the Notice of Refund Determination dated June 3, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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, certified and postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
