BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 23309
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

HISTORY

On June 3, 2010, the Sales and Fuels Tax Audit Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Refund Determination (Determination) to [Redacted] ([Redacted]) denying a refund of $582.50 claimed due for the period between October 1, 2006, and March 31, 2008. The claim denied by the Determination was filed on November 12, 2009, by [Redacted] (POA), who has a Power of Attorney form on file with the Tax Commission for [Redacted]. The Power of Attorney form names both [Redacted], as representatives of [Redacted].

The claim requested refunds for alleged sales taxes paid by [Redacted] for real property contract work during the pertinent timeframe. The POA, a "refund generator," filed claims with the Tax Commission in five other cases and The Bureau chose to manage all of those cases together with [Redacted] because all six cases involve the same legal issue.

Over the following several months, the POA and the Bureau had sporadic communication involving the case in which the Bureau repeatedly requested certain documentation regarding [Redacted] claim and the claims in the other five jointly-managed cases. The requested documentation was copies of the purchase invoices showing erroneously charged and paid tax and, pursuant to Idaho Sales & Use Tax Administrative Rule 117, letters showing that the POA or the taxpayer requested refunds from the contractors that were denied. None of the requested

documentation regarding any of the claims was received by the Tax Commission, a fact which eventually led the Tax Commission to issue the Determination.

[Redacted], through the POA, timely protested the Determination on August 3, 2010, in a letter arguing that the Bureau's request was burdensome, unnecessary, and improper.

The Bureau transferred the six case files, including [Redacted] audit file, to the Tax Commission's Legal/Policy Division (Legal) where joint management of the cases continued. Legal sent the POA letters outlining a taxpayer's hearing rights on September 21, 2010, and again on October 22, 2010, but no response to either was received by the Tax Commission. During that timeframe, a lawsuit involving the issues raised in the jointly-managed cases was litigated, and administrative action on the cases was halted pending its determination by the court.

A final hearing rights letter was sent to the POA on January 3, 2012, and an informal hearing was held by telephone on February 8, 2012. Attending the hearing for [Redacted] were [Redacted]. Consistent with the protest and previously communicated stance, the POA argued in that meeting that the documentation required by Idaho Sales Tax Administrative Rules to obtain a tax refund, and requested in the cases by the Tax Commission, was overly burdensome to produce. The Tax Commission reiterated its stance that certain documentation must be presented with the claim. The hearing ended with an agreement between the parties that the POA would have a month to provide the Tax Commission with further documentation of the transactions on which the claims were based. The Tax Commission has had no further communication with the POA 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).

The POA filed a sales tax refund claim for [Redacted] 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, even after the POA received repeated requests from the Tax Commission to do

so. This requirement was discussed with the POA repeatedly by the Bureau, then later with other Tax Commission representatives during the informal hearing, but still, no further information has been received by the Tax Commission.

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.

_____

Copy mailed to:

[Redacted]