

During the periods in question, the taxpayer operated as a brewer and wholesaler of beer making sales to customers in Idaho. As required by state law and under the authority of the Alcohol Beverage Control Bureau (ABC), the taxpayer held the appropriate licenses to sell beer in Idaho (Idaho Code § 23-1003(a) and IDAPA 11.05.01.11.02). A tax of fifteen cents per gallon is imposed on every such sale (Idaho Code § 23-1008(1)), and the wholesaler is responsible for payment of this tax (Idaho Code § 23-1048). The Commission requires everyone liable for paying beer tax to register for a beer tax permit number (IDAPA 35.01.12.016.01) and to submit regular reports indicating beer sales for a given period (Idaho Code § 23-1048).

The Bureau undertook a review of each licensed wholesaler to ensure they were properly permitted with the Commission. In the course of this review, the Bureau discovered that the taxpayer had not registered for a beer tax permit. This issue prompted the Bureau to perform a more comprehensive audit of the taxpayer's beer sales. In so doing, the Bureau found that the taxpayer had never paid beer tax on any of its sales. After completion of the review, the Bureau issued a Notice for all unpaid beer tax since the inception of the business in Idaho, a period of about eleven years.

After the adjustment noted above, the taxpayer no longer protests the Bureau's determination and calculation of the tax owed; however, the taxpayer still protests the Bureau's interpretation and application of the statute of limitations as it applies to the beer tax. Therefore, the remainder of this decision will be restricted to an analysis of these limitations.

The statutes governing the beer tax do not contain a statute of limitations but instead incorporate part of the income tax code for this purpose (Idaho Code § 23-1050A):

23-1050A. Collection and enforcement. The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3042 through 63-3065A, inclusive, and sections 63-3068 and 63-3075, Idaho Code, shall apply and be available to the state tax commission for enforcement and collection of the

tax imposed by this chapter, and said sections shall, for this purpose, be considered part of this act. Any reference to taxable year in the income tax act shall be, for the purposes of this act, considered a taxable period.

The statute of limitations is set forth in Idaho Code § 63-3068:

63-3068. Period of limitations for issuing a notice of deficiency and collection of tax. (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.

...(d) In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

Under the above statute, the Bureau argued that there is no time limitation on the issuance of the Notice because the taxpayer failed to file beer tax returns for any taxable period. As already noted, in accordance with this interpretation, the Bureau issued the Notice for all taxable periods from the inception of the business forward.

In the protest and the informal hearing, the taxpayer argued that the Notice should have been limited to three years because it filed a return with ABC during all taxable periods. This return contained information regarding all beer imported into or sold in Idaho. The return does not contain any reference to the beer tax, but it is required by the same chapter of the Idaho Code in which the beer tax is imposed (Idaho Code § 23-1006). The taxpayer also filed many other tax returns with the state of Idaho during the audit period for income tax, sales tax, and payroll taxes. The taxpayer notes that the term “return” as used in Idaho Code § 63-3068 has no definition in the income tax code. Therefore, the taxpayer argues that it met the requirements of filing “a return” which should have limited the Bureau to a three-year audit period.

Since the beer tax statutes incorporate the limitations of the income tax statutes, these limitations must be read and interpreted as if they were part of the beer tax statutes (Idaho Code § 23-1050A). When incorporated into the beer tax statutes, Idaho Code § 63-3068(a) could be read as: “a notice of deficiency...for the [beer] tax...shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later” (Idaho Code § 63-3068(a)). It is important to note that this is a tax statute incorporated into this chapter to apply to the beer tax. The return submitted to ABC or other types of tax returns have nothing to do with the beer tax. Therefore, as incorporated into the beer tax statutes, the Commission concludes that the “return” to which this statute refers can only mean a beer tax return. The language in subsection 63-3068(d) on which the taxpayer relies should also be read in this manner. No other type of return starts running the statute of limitations. Since the taxpayer failed to file a beer tax return for the entire audit period, there is no statutory time limitation applicable to any part of the Notice.

THEREFORE, the Notice of Deficiency Determination for beer tax dated December 10, 2010, and directed to [Redacted], is AFFIRMED by this decision.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
\$41,118	\$2,057	\$12,134	\$55,309

Interest has been calculated through September 28, 2012.

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.
