

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23890
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On December 29, 2010, the Sales, Use, and Miscellaneous 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 sales and use tax, penalty, and interest in the total amount of \$129,254 for taxable periods April 2006 through March 2009. The taxpayer filed a timely appeal and petition for redetermination on February 28, 2011, and requested an informal conference, which was held on September 22, 2011.

The Commission, having reviewed the audit file and considered the information and documentation obtained at the hearing, upholds the Bureau’s findings for the reasons detailed below.

The taxpayer is a wholesaler and retailer of a wide variety of veterinary products. At issue in this case is the Bureau’s imposition of sales tax on nontaxed sales of a single product, [Redacted] (product), to customers in the agricultural industry. The taxpayer agrees with the Bureau’s imposition of sales and use tax in all other respects.

Idaho Code § 63-3622 states that all sales in Idaho are presumed to be subject to sales tax and the burden of justifying a nontaxed sale lies with the retailer. When a purchaser executes a valid exemption claim form (Form ST-101 in this case), the seller is relieved of the obligation to collect tax, unless the sale is “taxable as a matter of law.”

The taxpayer made nontaxed sales of the product when the purchasers claimed the use of the product was exempt under Idaho Code § 63-3622D, commonly known as the “production exemption.” The statute establishing the production exemption specifically excludes from the exemption the purchase and use of certain tangible personal property. When one of these exclusions applies to a sale of property, the sale cannot qualify for the production exemption, and it is subject to tax regardless of any customer’s claim to the exemption.

The Bureau does not question whether the taxpayer obtained proper exemption documentation for these nontaxed sales, but rather asserts the sale of this particular product is specifically excluded from the production exemption by law. The relevant exclusion is the purchase and use of hand tools with a unit price less than \$100 (Idaho Code § 63-3622D(g)(1)). The Bureau asserts that the product is a [Redacted] with a unit price less than \$100 and, therefore, a production exemption claim cannot apply to any sale of the product. Based on this reasoning, the Bureau asserts that sales of the product are “taxable as a matter of law.”

The taxpayer disagrees with the Bureau’s determination that the product is a hand tool. As the cost is not in dispute (the product retails for a few dollars), the deciding factor is whether the product is [Redacted]. Consequently, the remainder of the discussion will focus on that issue.

The term “[Redacted]” is specially defined in the production exemption as “[Redacted]” (Idaho Code § 63-3622D(g)(1)). Due to the breadth of this definition, the Commission has traditionally applied the term to a wide variety of property. [Redacted] in the past.

At this point, a brief description of the product seems helpful. The product consists of a [Redacted]. [Redacted].

The taxpayer argues that the product is not a tool at all but a material, similar to buying a [Redacted]. However, there seems to be an important distinction. [Redacted].

An argument could be made that [Redacted]. However, [Redacted] they are sold and used together and the [Redacted]. It seems unreasonable to create an artificial distinction for taxation when the product is treated as an integrated unit for all other intents and purposes.

The taxpayer points out that there is a specific holder that can be purchased separately from the product that is specially designed to fit the product. The taxpayer argues that the holder is the [Redacted], while the product itself is nothing more than a refill of material. The Commission agrees that there is a distinction between [Redacted]. However, as has already been discussed, the product can be normally used without the aid of any other instrument, a fact which the taxpayer does not dispute. In addition, the Bureau reviewed many sales totaling thousands of [Redacted]. In theory and practice, the product is used by [Redacted].

The Commission concedes that the purchase and use of the product would probably qualify for the production exemption in the absence of the hand tool exclusion; however, the exclusion does exist. It is a rule of statutory construction that tax exemptions exist only by legislative grace and are to be strictly construed against the party claiming the exemption. Kwik Vend Inc. v. Koontz, 94 Idaho 166, 483 P.2d 928 (1971); Leonard Construction Company v. Idaho State Tax Commission, 96 Idaho 893, 539 P.2d 246 (1975). With that under consideration and given the broad language of the “[Redacted]” definition, the Commission concludes that the product is a [Redacted] excluding its purchase and use from the production exemption. As the sale of the product is “taxable as a matter of law,” the taxpayer is responsible for the sales tax that should have been collected on sales of the product.

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

THEREFORE, the Notice dated December 29, 2010, and directed to [Redacted], is AFFIRMED by this decision.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$111,202	\$0	\$18,052	\$129,254
		PREPAYMENT	<u>(\$129,254)</u>
			\$0

As the liability has already been paid in full, the taxpayer has no further obligations related to this Notice.

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.
