

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 24089
[Redacted])
)
) Petitioner.)
)
) DECISION
)
_____)

On March 25, 2011, the staff of 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) denying adjustments it made on multiple sales tax returns. The Commission’s Notice proposed the remittance of a sales tax refund the taxpayer took for the period March 2010 through November 2010 in the total amount of \$62,032 which includes interest. For the reasons that follow, the Commission upholds the Bureau’s tax return adjustment denials.

Background

The taxpayer is a [Redacted] facility in Idaho. The taxpayer upgraded retail operating systems in several locations, including Idaho, with the purchase of [Redacted].

The taxpayer made multiple purchases of the goods described above. The taxpayer asserts that it took title of those goods in [Redacted]. At that location, the [Redacted] center in Idaho. In Idaho, the taxpayer applied additional [Redacted]. There were multiple shipments by the vendor to the Idaho distribution center during the time period covering this decision. Only those [Redacted] outside of Idaho are at issue in this decision. The auditor denied other adjustments the taxpayer made to its sales tax returns, but these were neither mentioned nor contested in the taxpayer’s protest. They are not discussed in this decision.

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax cannot or is not paid to the vendor, the buyer owes a use tax to the state. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621). The taxpayer did not pay sales tax to the vendor but, upon review of its purchasing records, accrued and paid use tax on these goods. Later, upon further review, it took adjustments on several tax returns, thus reclaiming the tax.

The Commission denied a portion of the adjustments by issuing a Notice, and the taxpayer filed a timely appeal and petition for redetermination on May 27, 2011. At the taxpayer's request, an informal hearing was held on October 26, 2011. There was additional correspondence between the Commission and the taxpayer to discuss the facts and the law that are pertinent to this decision.

Protest Summary

The taxpayer claims that it took title to the [Redacted] location. These sales in [Redacted] as the taxpayer characterizes them, were not subject to [Redacted] sales tax because of an exemption that exists for temporary storage. Although the vendor is also a registered Idaho retailer, the taxpayer believes the sale is not subject to Idaho tax because title to the goods was transferred from seller to buyer outside of Idaho.

As noted earlier, when goods have not been subject to an Idaho sales tax and are used in Idaho, they are subject to a use tax unless an exemption applies. The taxpayer relies on the following exemption from use tax to justify its refund claim:

- Storage Use. (a) The term "storage" includes any keeping or retention in this state for any purpose **except** sale in the regular course of business or **subsequent use solely outside this state** of tangible personal property purchased from a retailer.
- (b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person ...

(c) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state (Idaho Code § 63-3615, excerpted in relevant part; emphasis added.)

Based on the preceding statute, the taxpayer believes that goods it requested in various shipments from its vendor in [Redacted] and earmarked for eventual and sole use outside of Idaho qualified for a use tax exemption. In reviewing the tax return adjustment claims relative to the taxpayer's belief, the auditor denied the adjustments asserting that the in-state storage and use of the goods exceeded what was permissible under the previously cited statute, Idaho Code § 63-3615.

Analysis and Conclusion

Following the hearing, the Commission raised an alternative defense against the taxpayer's refund denial and expressed it in a letter to the taxpayer dated January 11, 2012. The alternative defense is the basis for this decision, and the Commission does not find it necessary to analyze the merits each party places on Idaho Code § 63-3615.

The vendor of the goods is registered in Idaho for the purpose of collecting sales tax and is defined as a retailer doing business in Idaho per Idaho Code § 63-3611. Assuming as the taxpayer states, that title to the goods in question passed from the vendor to the taxpayer in [Redacted], the following is relevant with respect to imposing an Idaho sales tax rather than a use tax.

Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a

receipt therefor in the manner and form prescribed by the state tax commission (Idaho Code § 63-3621(b)).

As noted in this narrative, the vendor sold tangible personal property to the taxpayer, stored it at facilities it rented to the taxpayer, continued to apply labor to the goods, and subsequently delivered them to Idaho. According to the code section cited above, which makes no mention of the passage of title in another state, the vendor was obligated to collect sales tax when it shipped the goods to Idaho.

In the current case, tax is due when Idaho delivery takes place. At this point, the seller has fulfilled its obligation to the buyer, though title passed both earlier and in another state. Idaho sales tax could not be due prior to the goods' entry into Idaho, as it would be constitutionally prohibited. The passage of time and title do not alter the need to assert sales tax. In the Commission's opinion, delivery into Idaho under the direction of the registered seller is the occasion for sales tax to be charged. There are no sales tax exemptions available, and the use tax exemption cannot apply.

On February 1, 2012, the taxpayer replied to the Commission's opinion, stating that the cited statute does not impose Idaho sales tax on transactions that occur in [Redacted] because, "Idaho lacks the minimum required constitutional nexus with such transactions" and that Idaho use tax is the applicable tax to examine for possible imposition.

The taxpayer relies on the passage of title as the single determining factor, and while the Commission agrees that passage of title is often relevant, it is not the only factor of consequence:

Sale. (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter (Idaho Code § 63-3612).

The Commission notes that the definition of “sale” for the purpose of sales tax cited above is inclusive of transactions where there is passage of title but is not restricted to it, and “sales” is defined to enable a broad but permissible reach in imposing the state’s sales tax. The previously cited Idaho Code § 63-3621(b) is evidence that an early passage of title does not prevent the later imposition of tax. Were the taxpayer’s reasoning to prevail, all out-of-state retailers with Idaho nexus could declare that title passes at a shipping dock, or at the point of transfer to a shipping agent, thus preventing any such sale from being subject to Idaho sales tax. This would be an unreasonable interpretation of the tax code.

The taxpayer contends that the definition language in Idaho Code § 63-3619 precludes the Commission from interpreting Idaho Code § 63-3621(b) to mean that a sales tax can be imposed upon delivery into Idaho when title has passed both previously and out of state:

The tax shall apply to, be computed on, and collected for all credit, installment, conditional or similar sales **at the time of the sale** or, in the case of rentals, at the time the rental is charged (Idaho Code § 63-3619(a)). [Emphasis added.]

With the preceding citation, the taxpayer presumes that the time of sale is when title passes, but the Commission reiterates that while such a presumption is true in many cases, the passage of title is not a bar to an Idaho registered vendor asserting taxes when the goods come to rest in Idaho at the buyer’s location, as unambiguously authorized in Idaho Code § 63-3621(b). The Commission concludes that the taxpayer cannot transform a sales tax transaction into a use tax transaction in order to take advantage of an exemption that exists only with the latter.

Additionally, the Commission believes that the section of Idaho Code § 63-3619 referred to above is intended to underscore that sales tax is accounted for and remitted on an accrual basis, rather than a cash basis. That is, tax is due at the time of a sale, irrespective of financing or any future or partial payment methods.

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 tax liability for the period March 2010 through November 2010.

The Bureau added interest to the denied refund amount. Interest is calculated through June 30, 2012, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated March 25, 2011, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$59,867	\$4,786	\$64,653

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.
