

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 24131
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On April 27, 2011, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted], (taxpayer) proposing use tax, penalty, and interest for the period October 1, 2008, through February 28, 2009, in the total amount of \$15,805. For the reasons that follow, the Commission upholds the audit findings.

Background

The taxpayer is a [Redacted]-based limited liability corporation and is also registered with the Idaho Secretary of State. The taxpayer reported Idaho wages through withholding remittance returns it filed with the Commission during the period covered by the audit.

According to the auditor’s research of U.S. Custom’s records, on three occasions the taxpayer imported goods from [Redacted], characterized as [Redacted]. The goods were documented as received on October 22, 2008, January 25, 2009, and February 20, 2009.

The auditor corresponded with the taxpayer asking for use tax on the purchase price of the goods or evidence why the use of such goods was exempt from tax. When the taxpayer failed to reply, the Bureau issued the Notice asserting a use tax liability, penalty, and interest. On June 14, 2011, the taxpayer filed a timely appeal and petition for redetermination of the Notice stating that it disagreed with the findings.

The Commission sent a standard hearing rights letter to the taxpayer on November 1, 2011. The taxpayer replied via email on November 21, 2011, that it wanted a hearing. On December 14, 2011, the Commission called the taxpayer to establish a hearing date, and an associate indicated that he would attempt to locate the bills of lading and sales documents in advance of a hearing. The Commission received no further correspondence from the taxpayer and sent an email on May 15, 2012, referencing the associate's indication that he would find and submit documentation. The Commission restated that the taxpayer could submit documentation and have a hearing whether or not documentation was provided or that the documents failed to reduce or eliminate the liability. As of the date of this decision, no reply has been received.

#### Relevant Tax Law

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax cannot be, 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). Goods purchased from [Redacted] and delivered into Idaho from a vendor that is not registered to collect Idaho sales tax will be subject to use tax unless an exemption applies.

#### Taxpayer's Protest

After the taxpayer received the Notice, it contacted the Commission stating that the goods were not shipped to Idaho; the business was closed, and an effort would be made to locate the shipping records. In subsequent correspondence, the taxpayer reported that the shipping records were in a safe that was stolen. This correspondence was followed by a formal letter of protest dated June 14, 2011.

In its protest, the taxpayer reiterates that a safe with shipping records was stolen, and a computer with pertinent records was destroyed in the robbery. Further, the taxpayer says the

State of Destination Idaho address recorded on the U.S. Customs' documents reviewed by the auditor is a mailbox and not a delivery point. It reiterates that the goods were delivered to [Redacted], not to Idaho.

### Analysis and Conclusion

After the Bureau issued the Notice, the auditor requested a copy of the police report in which the robbery would have been described. The taxpayer did not comply with this request or give reasons for noncompliance.

There are at least three possibilities why the receipt of these goods in the United States might not be subject to Idaho use tax. First, if the goods were shipped from [Redacted] to [Redacted] and subsequently never came to this state, Idaho tax would not be an issue. Second, if the goods were shipped to an Idaho retailer, they would be exempt as resale inventory (Idaho Code §§ 63-3609 and 63-3619). Finally, if the goods in Idaho were used in a production capacity, their use might qualify for an exemption under Idaho Code § 63-3622D, commonly referred to as the production exemption.

It is the burden of the taxpayer to provide evidence as to why tax is not due (Idaho Code § 63-3624(c)). The robbery has not been documented sufficiently to give reasonable doubt to the auditor's findings. The taxpayer has not provided evidence that it is engaged in a business that sells the goods in question, nor has it raised that defense. Further, the taxpayer has not shown evidence nor has it raised the defense that it uses the goods in an exempt capacity, such as production, in this state. The taxpayer did not file business income tax returns which would indicate revenue earned as a consequence of its purchases, either by their resale or their productive use.

The taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice is incorrect. As a result, the Commission will uphold the Notice. A determination of the Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984), and the burden is on the taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonable representation of the taxpayer's use tax liability for the period October 1, 2008, through February 28, 2009.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through August 31, 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 April 27, 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, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$11,556	\$2,889	\$1,902	\$16,347

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

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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.