

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24703
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On December 23, 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 sales tax and interest for the period January 1, 2005, through September 30, 2011, in the total amount of \$27,367.

On December 5, 2011, the taxpayer filed a timely appeal and petition for redetermination in anticipation of the Notice, and the Commission held a hearing at the taxpayer's request on May 14, 2012. For the reasons that follow, the Commission finds in favor of the taxpayer.

Background

The taxpayer is an Idaho partnership which leases [Redacted] to a related business and has done so since 1995. The taxpayer is comprised of a married couple and their two children, and the lessee is the husband's professional corporation (PC), comprised of himself.

There is one [Redacted] currently included in the leased property. The taxpayer acquired the [Redacted] in a lease-purchase transaction and paid tax on the lease payments. The taxpayer claims that the [Redacted] was purchased locally and taxed. All of the furniture purchases were prior to the audit period and are beyond the seven-year statute of limitations for tax (Idaho Code § 63-3633(c)).

The taxpayer did not collect tax on the periodic amounts it charged its lessee, the related PC, but began to do so in October 2011 when it acquired a sales tax permit. The auditor asserted

a liability for sales tax not charged by the taxpayer to the related lessee for the entire audit period.

The auditor calculated the liability for the audit period based on gross rental receipts reported on the taxpayer's income tax returns, prorating for partial audit years as necessary. No penalty was imposed.

Relevant Tax Law

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. The lease or rental of tangible personal property is also defined as a transaction subject to sales tax (Idaho Code §§ 63-3612(1) and (2)(h)). The purchase of goods for the purpose of resale, lease, or rental in the ordinary course of business is not defined as a transaction subject to sales tax (Idaho Code § 63-3609).

Some sales are exempt if the purchases were taxed and the parties to the subsequent resale conform to particular definitions. The "occasional sales" exemption is relevant in this protest:

The sale, lease or rental of a capital asset in substantially the same form as acquired by the transferor and on which the initial transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.... (Idaho Code § 63-3622K(b)(4)).

As used in this section, the term "occasional sale," when applied to the sale of a motor vehicle, means only:...

Sales of motor vehicles that fall within the scope of the transactions detailed in subsection (b)(2) through (b)(5) of this section (Idaho Code § 63-3622K(c)(2)).

The Taxpayer's Protest

The taxpayer's objections are not relevant because the Commission determines that the transactions between the taxpayer and its lessee are exempt for the reasons that follow.

Analysis

The Commission accepts that the taxpayer's purchases of [Redacted] that it holds for resale in the form of a lease to the PC were taxed. Further, the auditor verified that the lease of the automobile by the taxpayer was taxed.

Additionally, the taxpayer, a partnership comprised entirely of family members within the second degree of consanguinity, made the lease to one of those family members. Thus, all of the necessary elements exist for an exemption per the relevant subsections of Idaho Code § 63-3622K, referenced above.

Based on this analysis, the taxpayer collected tax in error from its lessee in the post-audit period. This tax is refundable to the lessee. Also, in accordance with this analysis, the [Redacted] is taxable. These two elements are reconciled against an audit pre-payment made by the taxpayer to determine an amount to be returned to the taxpayer.

An accounting, summarized here, was previously sent to the taxpayer. All of the calculations, tax to be refunded, and tax owed are inclusive of accrued interest payable or owed per Idaho Code §§ 63-3626 and 63-3632. The Commission returns \$1,310.58 to the taxpayer and directs it to refund that amount to its lessee as tax collected and remitted in error. Additionally, the taxpayer owes \$1,496 in tax on the lease buy-out. Finally, the Commission returns to the taxpayer its audit pre-payment of \$7,503.40. In the aggregate, the total amount payable to the taxpayer, inclusive of the stipulation that \$1,310.58 is to be returned to the lessee, is \$7,699.

THEREFORE, the Notice of Deficiency Determination dated December 23, 2011, is hereby AMENDED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

The amount to be REFUNDED to the taxpayer is:

<u>TAX</u> (\$7,537)	<u>INTEREST</u> (\$162)	<u>TOTAL</u> (\$7,699)
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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.
