

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23562
[Redacted],,)	
)	
Petitioner.)	DECISION
_____)	

On August 8, 2010, 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) proposing sales tax, use tax, penalty, and interest for the period January 1, 2006, through June 30, 2009, in the total amount of \$20,022.

On October 28, 2010, the taxpayer filed a timely appeal and petition for redetermination of the Notice. On December 7, 2010, the Commission wrote advising the taxpayer of its right to an informal hearing, to which no response was received. A second letter was sent on January 31, 2011, advising the taxpayer of its right to an informal hearing. To date, there has been no reply.

The Commission, having reviewed the file, hereby issues its decision upholding the audit findings.

Background

The taxpayer started business in 2006 doing [Redacted]. It purchased a business, and most of the assets of that business, from [Redacted].

The Bureau conducted a routine audit of the taxpayer's business for the purpose of determining sales and use tax law compliance.

Due to the lack of response from the taxpayer since the protest, the Commission focused on the protest letter and responded directly to the issues contained within it. Each issue is addressed separately in the following analysis.

Protest Analysis

Property Tax

Within the examination of ordinary expenses, the Bureau held separately stated property tax charges that were associated with the taxpayer's lease of equipment prior to July 1, 2008, subject to sales tax. The taxpayer protested, stating that it did not think that it should have to pay sales tax, as it seemed like double taxation.

The lease of equipment is subject to a sales tax (Idaho Code § 63-3612(2)(h)). Vendors who own property and lease it to others often separately state their business property tax obligations from the lease charge on invoices provided to customers. Prior to the adoption of Idaho Code § 63-3622UU on July 1, 2008, which specifically exempts the separately stated property tax charge related to leased equipment, these amounts were held to be part of the sales price (Idaho Code § 63-3613(2)).

The Commission supports the Bureau's stance that any charges prior to the enactment of the exemption are subject to sales tax. The fact that an exemption was necessary for separately stated property tax charges related to leased equipment would further support the idea that prior to the adoption of Idaho Code § 63-3622UU these charges were subject to sales tax.

Freight-In

“Freight-in” refers to freight charges incurred by the seller for its receipt of goods it holds for resale to the final customer. Idaho Code § 63-3613(a)(3) includes in the sales price subject to sales tax, the cost of transportation of the property prior to its sale.

Within the examination of ordinary expenses, the Bureau held separately stated charges for freight-in subject to tax, indicating that the charges were imposed for bringing the equipment from [Redacted] prior to the lease of the equipment. The taxpayer protested that these specific charges were imposed for the return of the leased equipment to the lessor rather than charges for freight in. However, no documentation was provided to substantiate this claim. Absent information to the contrary, the Commission finds the position taken by the Bureau to be a reasonable representation of the structure of the transaction.

Fuel Surcharge

Fuel surcharges are a fee charged by some vendors that are generally associated with delivery to the customer. Fuel surcharges under these circumstances are not included in the sales price subject to sales tax (Idaho Code § 63-3613(b)(7)). In the event that the fuel surcharge is not associated with delivery to the customer, this charge is included in the sales price subject to sales tax (Idaho Code § 63-3613(a)(2)).

Within the examination of ordinary expenses, the Bureau determined that the separately stated fuel surcharges were unrelated to delivery and therefore subject to sales tax. The taxpayer stated that it did not believe it should have to pay tax on these charges, but did not provide any reasoning as to why. Absent information to the contrary, the Commission finds the position taken by the Bureau to be a reasonable representation of the structure of the transaction.

Occasional Sale

On May 17, 2007, the taxpayer purchased a business and most of the assets of that business. In the examination of asset additions, the Bureau classified the original purchase of the business and the equipment as a bulk sale. Idaho Code § 63-3622K(b)(2) does provide exemption for the transfer of all, or substantially all, of the property associated with a bulk sale agreement, if certain conditions are met.

In September and October 2008, more than a year after the original purchase of the business, the taxpayer purchased additional equipment from Mr. [Redacted]. The Bureau held that the later purchase of equipment in September and October 2008 was not a part of this original bulk sale and held the purchase of these items subject to use tax.

The taxpayer protested stating that if the later purchase is not part of the original bulk sale agreement, it should still be exempt under another part of the occasional sale exemption. Idaho Code § 63-3622K(b)(1) provides an exemption for “a sale of property not held or used by a person in the course of an activity for which he is required to hold a seller’s permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a “retailer” under section 63-3610(c), Idaho Code.”

The Bureau determined, in this case, that the later sale of equipment does not qualify as an occasional sale because the seller held a seller’s permit at the time of the sale. Idaho Code § 63-3621 imposes tax on the storage, use, or other consumption of tangible personal property unless an exemption applies. The Commission supports the Bureau’s determination that the exemption referenced in the protest does not apply, therefore, the purchase of this equipment has been held taxable.

Software

In the examination of asset additions, the Bureau held that the purchase of software by the taxpayer was subject to sales tax. The taxpayer protested the imposition of tax, stating that it does not believe that the design software it purchased should be subject to sales tax. Software available for general sale, termed canned or prewritten, is defined as tangible personal property, the sale of which is subject to sales or use tax (Idaho Code § 63-3616(b)).

The Commission was not given specific information as to why the taxpayer thinks that the software purchased is not subject to sales tax other than the distinction that it is design software. The Commission supports the Bureau's determination that the design software meets the definition of tangible personal property and therefore, the purchase is subject to sales tax.

Fuels Tax

The taxpayer's 2008 business income tax return included Form 75, Idaho Fuels Use Report, showing a credit for motor fuels tax it paid for fuel it used in off road equipment. Idaho Code § 63-3622C provides an exemption from sales tax on purchases which are subject to the motor fuels tax imposed by chapter 24, title 63, Idaho Code, and purchases upon which motor fuels taxes have actually been paid. When the taxpayer took the form 75 credit, this exemption no longer applied because the motor fuels tax had no longer been paid on that fuel. The Bureau held that when the credit was taken, the fuel became subject to tax because no exemption from sales or use tax applied.

The taxpayer admitted to claiming the refund but wanted to know why the original submission of form 75 had not been reduced prior to allowing the refund. In response, the

Commission concludes that form 75 was completed improperly by the taxpayer and not discovered until the examination. The appropriate tax should have been calculated in section VII of form 75, and the calculated use tax liability should have been carried through to Section IV, line 5. The Commission agrees with the determination made by the Bureau.

Conclusion

The taxpayer did not provide adequate evidence to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission upholds the Notice as prepared by the Bureau. A determination of the State Tax 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 an accurate representation of the taxpayer's sales and use tax liability for the period January 1, 2006, through June 30, 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. The Commission acknowledges that the taxpayer has made a partial payment of the liability. Interest is calculated through January 31, 2014, 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 August 26, 2010 is APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$16,997	\$850	\$3,025	\$20,872
		PAYMENT	<u>(11,994)</u>
		TOTAL DUE	<u>\$ 8,878</u>

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 _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
