

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24725
[Redacted])	
Petitioner.)	
)	DECISION
)	
)	
_____)	

On December 1, 2011, the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted]. The Notice proposed additional sales and use tax, penalty, and interest in the total amount of \$77,004 for taxable periods January 2005 through March 2011. The taxpayer filed a timely appeal and petition for redetermination on December 20, 2011, and requested an informal hearing, which was held on July 26, 2012.

The Commission, having reviewed the audit file and additional documentation submitted by the taxpayer since the hearing, hereby modifies the audit findings for the reasons detailed below.

The taxpayer is primarily involved in commercial real estate construction projects in Idaho. The only issue in this protest is the taxpayer's sale of [Redacted] equipment that the taxpayer installed as part of a larger real estate construction contract. Though the contract primarily involved a sale of real property by the taxpayer to its customer, all parties agree that the [Redacted] equipment remained tangible personal property even after installation.

For sales tax purposes, a contractor constructing real property is the consumer of any materials that become part of the realty and owes sales or use tax on such materials (Idaho Code § 63-3609(a)):

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

However, in the case of the [Redacted] equipment in question, it did not become part of the real property. Therefore, the taxpayer's customer, not the taxpayer itself, was the end consumer of that particular equipment.

The Bureau asserted that the taxpayer handled the transaction incorrectly. First, the taxpayer paid sales tax on its purchase of the [Redacted] equipment like any other project materials that would be incorporated into real property. However, the taxpayer should have purchased the [Redacted] equipment for resale, which would have exempted the transaction from sales or use tax (Idaho Code § 63-3609). Then, in the construction contract with its customer, the taxpayer included the [Redacted] equipment as part of the real property contract and did not charge sales tax on that part of the transaction. Again, the Bureau argued that the taxpayer should have separately stated the sale of the [Redacted] equipment in the contract and charged sales tax on that portion. The taxpayer does not dispute the Bureau's position on any of these points.

When a seller fails to collect sales tax on a taxable sale of tangible personal property, the seller is liable for the tax it should have collected (Idaho Code § 63-3622). The Bureau held the taxpayer liable for the entire amount that should have been collected when the taxpayer sold the [Redacted] equipment. The Bureau assumed an average three percent markup over the taxpayer's purchase price of the equipment. Again, the taxpayer does not dispute these points.

The remaining issue then was giving the taxpayer proper credit for the sales tax paid on its purchase of the [Redacted] equipment to ensure that the state of Idaho received the proper amount of sales tax that should have been collected on the marked up sales price of the

[Redacted]equipment. When the taxpayer purchased the equipment, the vendor charged sales tax to the taxpayer; however, the Bureau and the taxpayer disagreed on the amount of sales tax charged by the vendor. This issue is the only point of disagreement.

To prove that sales tax has been properly paid, a purchaser must provide documentation, usually in the form of a receipt from the seller, that sales tax was charged (Idaho Code § 63-3621(b)). In reviewing the relevant documentation during the audit, the only document available to the Bureau that showed the full, correct amount of sales tax charged was the original quote provided by the vendor. In the subsequent contract and invoices, there was no indication of that same amount of sales tax charged. The Bureau did not feel that it could rely on the quote alone as proof of sales tax paid, as the quote was a document prepared prior to the contract and was unsigned by either party.

During the informal hearing, the Commission requested that the taxpayer provide additional documentation that made it clearer that the full amount of sales tax was charged. After several months, the taxpayer provided a signed contract between the taxpayer and its vendor for the purchase of the [Redacted] equipment. That contract explicitly incorporated the original quote as an official exhibit to the contract. It was the same quote that showed the correct amount of sales tax charged. In addition, the total amount paid by the taxpayer for the equipment matched the total amount in the quote, the contract, and the progress billing invoices. Though the full amount of sales tax was only reflected in the original quote, the Commission believes that the incorporation of that document into the official contract is sufficient evidence that the full amount of sales tax was paid to its vendor, and credit should be given for taxes paid. This credit offsets most of the liability arising from the subsequent sale to the taxpayer's customer.

Finally, the Commission approves of the Bureau's imposition of interest as appropriate per Idaho Code § 63-3045(6) and, under the authority of Idaho Code § 63-3047, abates the entire penalty imposed.

THEREFORE, the Notice dated December 1, 2011, and directed to [Redacted] is MODIFIED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax, penalty, and interest (calculated through May 29, 2013):

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$62,890	\$0	\$9,181	\$72,071

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.
