

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],.) DOCKET NO. 24732
)
)
Petitioner.) DECISION
)
_____)

On October 19, 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 use tax, penalty, and interest in the total amount of \$23,956 for taxable periods August 2010 through October 2010.

The taxpayer filed a timely appeal and petition for redetermination on December 19, 2011. The taxpayer submitted additional documentation subsequent to the appeal. After review of the documents, the Bureau agreed with the taxpayer to reduce the Notice to \$8,397. The Commission accepts this adjustment.

The taxpayer then requested an informal hearing, which was held on July 17, 2012, to discuss its disagreement with the remaining liability.

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 a [Redacted] specializing in [Redacted] work. In addition, the company routinely works in [Redacted].

The Bureau initiated a limited scope audit of a single project in which the taxpayer undertook a contract to [Redacted] owned by the [Redacted] (customer). The taxpayer extracted the [Redacted], used in the [Redacted] project from a nearby [Redacted] also owned by the

customer. The [Redacted] required [Redacted]The Bureau held the taxpayer, as a contractor improving real property, liable for use tax on the value of the [Redacted] consumed in the [Redacted]. The Bureau estimated the value of the material based on similar values for [Redacted] that had already been [Redacted]The taxpayer protested the Bureau's imposition of tax on its use of the [Redacted]. The taxpayer argued that because the [Redacted] was obtained from land owned by its customer, no transaction had taken place upon which tax could be imposed. In addition, the taxpayer pointed out that its customer owned the [Redacted]at all times during the course of the project and, therefore, the [Redacted] had no value to the taxpayer.

For sales tax purposes, a contractor improving 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.

The term "use" as utilized in the above statute is a specially defined term for the purposes of the use tax (Idaho Code § 63-3615(b)):

(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 in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax...

Though the taxpayer did not own the [Redacted] nor did the customer purchase the [Redacted], the taxpayer used the [Redacted] in the performance of a contract upon which the above statute clearly imposes a use tax. Consequently, the Commission confirms the Bureau's assertion that the taxpayer is liable for tax on its use of the [Redacted].

However, the Commission disagrees with the value used by the Bureau in imposing use tax. By statute, use tax is imposed on “the value of the property” normally presumed to be a “recent sales price” (Idaho Code § 63-3621). In the absence of a sales price, as in this case, this value must be estimated. In estimating the value of the [Redacted], the Bureau looked at values of comparable [Redacted] that had already been [Redacted], deciding upon an estimated value of [Redacted] per ton. In doing so, the Bureau included the significant costs associated with the [Redacted] process.

In this case, the taxpayer first exercised control over the material prior to its excavation from the [Redacted]. From the moment of this first use, the taxpayer knew it would be the consumer of the [Redacted]. The subsequent [Redacted] labor was performed by the taxpayer. Finally, the taxpayer consumed the processed [Redacted] in the course of improving real property.

As the consumer of the materials, the taxpayer only owes use tax on the value of the [Redacted] at the time of first use prior to excavation. The taxpayer cannot be held liable for tax on the value of its [Redacted] and processing labor when the taxpayer knew from its first use of the materials that it would be the end consumer of those materials. If the taxpayer had first exercised power over the [Redacted] after it had already been [Redacted] by another party, the Bureau’s estimation of value would be reasonable. In this case, the value must be redetermined.

In determining the value of [Redacted] prior to [Redacted], the Commission has long used royalty value as a reasonable approximation of the value. The royalty value is money paid to a land owner for the right to [Redacted] from the owner’s [Redacted]. It is usually paid as a dollar amount per ton of [Redacted] material [Redacted]. For purposes of this case, the taxpayer presented several agreements that the taxpayer had entered into with other similar [Redacted] in

which the taxpayer paid a royalty value of [Redacted] per ton of [Redacted] material [Redacted]. The taxpayer did say that because of the unknown factors regarding the [Redacted] in this case, it felt that a royalty value of [Redacted] per ton was a fair approximation. The Commission agrees that this amount is a reasonable estimate of the royalty value of the [Redacted].

Finally, the Commission approves of the Bureau's imposition of interest and penalty as appropriate per Idaho Code §§ 63-3045(6) and 63-3046(a).

THEREFORE, the Notice dated October 19, 2011, and directed to [Redacted] is MODIFIED by this decision.

IT IS ORDERED that the taxpayer owes 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>
\$3,777	\$189	\$401	\$4,367

The taxpayer made a prepayment on February 2, 2012 in the amount of \$2,898.10 which has resulted in the following reductions in tax and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,097	\$189	\$53	\$1,339

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.
