BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 24874
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	
	)	
	)	

On March 6, 2012, the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer). The Notice proposed additional sales and use tax, penalty, and interest in the total amount of $2,700 for taxable periods February 2009 through November 2011. The taxpayer filed a timely appeal and petition for redetermination on March 9, 2012, and requested an informal hearing, which was held on September 13, 2012.

The Commission, having reviewed the audit file and additional information discussed during the hearing, hereby modifies the Notice for the reasons detailed below.

The taxpayer owns and operates a business the sole purpose of which is the sale and application of a [Redacted] brought in by its customers. When applied to [Redacted].

Prior to the Bureau's audit, the taxpayer considered itself to be performing repair work in applying the spray-on bedliners. When billing its customer, the taxpayer charged sales tax on the materials charge, but did not charge tax on the labor. Since the taxpayer resold and taxed the sale of the spray-on bedliner material, it purchased that material for resale without paying tax.

After the Bureau undertook a routine sales and use tax audit of the business, the Bureau disagreed with the taxpayer's position on its sales. The Bureau argued that rather than repairing truck beds, the taxpayer was actually performing fabrication labor in the application of the spray-

on bedliners and should have collected tax on the entire amount of the sale. Therefore, the Bureau held the taxpayer liable for sales tax on the labor charges.

The Bureau also held the taxpayer liable for use tax on any nontaxed purchases of materials, primarily shop supplies, which did not become part of the spray-on bedliner. However, the Bureau agreed with the taxpayer's nontaxed purchases of the spray-on bedliner material.

The taxpayer protested the Bureau's audit findings in regards to its sales. The taxpayer reiterated its previous interpretation that it performed repair work in applying the spray-on bedliners, and therefore should not charge tax on its labor. The taxpayer did not protest the use tax portion of the audit findings. Consequently, the remaining discussion focuses on the disagreement over the treatment of the taxpayer's sales.

The sale of tangible personal property in Idaho is subject to sales tax. The tax must be collected by the seller from the purchaser at the time of the sale (Idaho Code § 63-3619). In determining the taxable sales price of tangible personal property, the seller must include any "services agreed to be rendered as part of the sale" as well as any of its "labor or service costs" unless a specific exemption applies (Idaho Code § 63-3613). The seller has a burden to prove that any sale, or part of a sale, is exempt from tax (Idaho Code § 63-3621).

In this case, all parties agree that the taxpayer is a seller of tangible personal property (the spray-on bedliner material). The question before the Commission is whether the taxpayer performs repair labor in its application of the spray-on bedliner or fabrication labor as asserted by the Bureau. The Commission accepts that repair labor is exempt from tax (IDAPA 35.01.02.062):

> 01. In General. Repairs normally require both material and labor. Persons engaged in the business of repairing, renovating or altering tangible

> personal property owned by others are required to collect sales tax upon the parts or material required in the repair or renovation of the property.
>
> 02. Separate Statement of Parts or Materials. The sales price of parts or materials must be separately stated and sales tax must be charged on these parts or materials. Separately stated repair labor is not taxable. If parts and materials are not separately stated from the repair labor, the total amount for parts and repair labor is subject to sales tax.

There is also an administrative rule that distinguishes between repair and other types of taxable labor, such as fabrication (IDAPA 35.01.02.029.02):

> 02. Repairing and Reconditioning Distinguished. Producing, fabricating, and processing includes any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do not include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced.

The Commission sees two avenues of argument from the Bureau, both of which support its assertion that the labor is taxable. First, the Bureau argues that the application of the spray-on bedliner to the truck body materially enhances the usefulness of the vehicle such that it is no longer the "use for which it was originally produced." In that case, by Rule 029.02 quoted above, the labor could not be mere repair work. Second, the Bureau argues that in producing the spray-on bedliner, the taxpayer has actually fabricated a truck accessory independent of the truck itself. The Bureau acknowledges that production of the spray-on bedliner results in irreversible adherence to the truck body, but the Bureau argues that does not change the fact that an accessory has been produced. The Bureau points out that a truck accessory exists (slip-on bedliners) that serves a similar purpose to the spray-on bedliners at question in this case.

The Commission disagrees on both points. The Commission views the spray-on bedliner, not as an accessory independent of the truck, but as a component part of the underlying vehicle.

In this way, the Commission views the spray-on bedliner very similarly to paint. Though the spray-on bedliner material may have additional thickness, durability, and perhaps even additional features (e.g. a non-slip surface) it primarily serves an identical purpose to paint protection of the underlying truck body. With that in mind, it is appropriate to consider the treatment of vehicle paint jobs.

Motor vehicle paints come in a very wide variety of quality and durability. If an auto body shop were to replace low quality paint on a truck with a higher quality paint, the truck has certainly been improved and likely will last longer than it would have, but the Commission would not agree that the truck now has any use beyond the uses for which the truck was originally produced. The Bureau seems to agree on this point as it has generally and consistently treated the labor to apply new paint to a vehicle even if the new paint exceeds the quality of the prior paint as exempt repair labor.

Therefore, the Commission sees no justification for treating the application of spray-on bedliners any differently than a new paint job. While the Commission acknowledges some differences, the similarities are too great. After all, some high quality paints have most, if not all, of the same features as spray-on bedliners.

Finally, the Commission acknowledges that the application of an initial protective coating on tangible personal property whether paint, spray-on bedliner, or some other material would constitute a step in the process of producing tangible personal property. Similarly, the Commission agrees that the application of a protective coating to new tangible personal property even if the property already had a protective coating would constitute a step in the process of producing tangible personal property. In either of those cases, the seller would need to charge sales tax on the fully fabricated price, including both materials and fabrication labor. However,

the Commission sees no evidence in regards to the transactions at issue in this case that the spray-on bedliners were applied to new tangible personal property or as an initial protective coating. During the hearing, the taxpayer confirmed that almost all of its work is application of spray-on bedliners to used truck beds that already had a protective coating. Therefore, the Commission agrees with the taxpayer that its labor is repair work and should not be held taxable.

THEREFORE, the Notice dated March 6, 2012, and directed to [Redacted] is MODIFIED by this decision.

IT IS ORDERED that the taxpayer owes the following amount of use tax, penalty, and interest (calculated through December 31, 2011):

TAX	PENALTY	INTEREST	TOTAL
$1,066	$0	$66	$1,132

The taxpayer made a pre-payment on December 31, 2011, in the amount of $1,170. Consequently, the taxpayer will receive a refund of the following amount of overpaid use tax and interest (calculated through June 11, 2013):

TAX	INTEREST	TOTAL
($38)	($2)	($40)

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] [Redacted]