

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25235
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On January 26, 2012, 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 use tax, penalty, and interest for the period January 1, 2010, through December 31, 2010, in the total amount of \$2,460.

On March 5, 2012, the taxpayer filed a timely appeal and petition for redetermination of the Notice stating that it disagreed with the audit findings. The Bureau continued to request additional information from the taxpayer prior to transferring the audit file and protest to the Commission's Policy and Legal Section on September 12, 2012. The Commission sent standard hearing rights letters to the taxpayer on September 27, 2012, and November 6, 2012. The second letter was marked "Final Notice." As of this date, the taxpayer has not replied. For the reasons that follow, the Commission upholds the audit findings.

**Background, Audit Findings, and Applicable Tax Law**

The taxpayer is an Idaho [Redacted]. For the period under audit, the Bureau determined that the taxpayer performed three contracts for [Redacted]. Further, the Bureau determined that the [Redacted] provided material used by the taxpayer to improve real property on behalf of the [Redacted]. The Bureau estimated the value of the materials, and asserted a use tax against the taxpayer because it logically concluded that no tax had been paid by the [Redacted] on the

purchase price or value of the material. Further, there was no evidence that the taxpayer paid tax.

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax cannot or is not paid to the vendor, the buyer owes a use tax to the state. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621).

Further,

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 (Idaho Code § 63-3609(a)).

Under the presumed facts, the [REDACTED] gave material to the taxpayer. It is not conceivable that the [Redacted] paid tax on the purchase or the value of the materials transferred to the taxpayer because instrumentalities of the [Redacted] are exempt from taxes:

Prohibited taxes. There is exempted from the taxes imposed by this chapter the sale at retail, storage, use or other consumption of tangible personal property or taxable services which this state is prohibited from taxing under the constitution of the United States (Idaho Code § 63-3622A).

Federal Government. Sales to and purchases by the federal government and its instrumentalities are not subject to Idaho sales or use taxes except as provided by federal laws or regulations. Federal law also prevents the state of Idaho from imposing sales tax on any sales by the federal government or its instrumentalities. For purposes of Idaho sales and use tax, the American Red Cross is an instrumentality of the federal government (IDAPA 35.01.02.094.06).

Real property contractors working for [Redacted] frequently make use of government-supplied materials. A Commission administrative rule addresses this topic within the framework of the tax code sections previously cited:

**Materials Provided by Project Owner.**

- a. If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he must pay sales or use tax when he buys the material. If the owner does not pay tax on the materials, the contractor may be held liable for the tax.
- b. If material needed for a contract is purchased or supplied by an owner who is exempt from sales and use taxes, then the use by the contractor is subject to use tax. This is true even if the property is owned by an exempt entity such as the federal government or a state government agency. For example, if a contractor has a public works contract to build a structure using materials owned and supplied by the government, whether federal, state, or local, he is the consumer of the materials and is subject to a use tax on their value. This tax falls directly upon the contractor and not the owner of the property.
- c. A contractor who buys tangible goods cannot avoid tax just because the goods will be built in to a structure which will belong to, or be used by an exempt entity. Contractors and subcontractors may not avoid paying sales or use tax due to a contract which allows invoices to be made out in the name of the exempt entity, such as the U.S. Government, and designate the contractor or subcontractor as an agent of the exempt entity. In this case, the contractor or subcontractor is the user or consumer of the material and its use, while it is in his possession and subject to his labor, is taxable (IDAPA 35.01.02. 012.10).

**Taxpayer Protest, Analysis, and Conclusion**

The taxpayer's protest is simply stated: it did not purchase materials, or provide them for the work accomplished under contract to the [Redacted]. It also notes that "[s]ales tax was not included, assessed or collected" (taxpayer's protest letter, March 5, 2012).

The Commission is uncertain of the meaning of the previous quote, but concludes that the taxpayer does not grasp the argument as the Commission understands it: a contractor improving real property owes tax on the value of incorporated materials if the tax obligation was not satisfied by the purchaser or another subcontractor.

The Bureau attempted to determine the value of the material used by the contractor, but the taxpayer was unresponsive to repeated requests. In the absence of evidence, the value of the material provided by the [Redacted] is estimated to be fifty-five percent of total contracts' amounts. The Taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the Notice. 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 a reasonable representation of the taxpayer's use tax liability for the period January 1, 2010, through December 31, 2010.

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. Interest is calculated through October 15, 2013, 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 January 26, 2012, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,242	\$111	\$228	\$2,581

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.

\_\_\_\_\_