

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25279
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On September 30, 2011, 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). The Notice asserted additional sales tax, use tax, penalty, and interest in the total amount of \$51,269 for taxable periods from March 1, 2008, through February 28, 2011. The taxpayer filed a timely appeal and petition for redetermination on October 10, 2011.

After the protest, the taxpayer presented additional documentation to the Bureau which resulted in an adjustment to the amount asserted in the Notice. The adjusted amount asserted by the Bureau is \$14,944. As the taxpayer and Bureau agreed upon the adjustment, the Commission finds no reason to review the adjustment further.

After the adjustment, the taxpayer remained in disagreement on certain issues, so the Commission advised the taxpayer of its right to an informal hearing. The taxpayer requested a hearing in writing and it was held on April 16, 2013.

The Commission, having reviewed the audit file and considered the information and documentation provided at the hearing and in the months following the hearing, upholds the adjusted audit findings for the reasons detailed below.

The taxpayer operates a business selling and servicing [Redacted] such as [Redacted]. The taxpayer also sells and [Redacted] and [Redacted], sells [Redacted] for other parties, and

sells [Redacted]. The Bureau undertook a routine audit of the taxpayer's records to review compliance with applicable sales and use tax laws. Relevant to this case, the Bureau found that on many of the taxpayer's sales of [Redacted], the taxpayer was separately stating a charge for its own freight costs prior to the sale (freight in), and a charge for its labor costs incurred in preparing the [Redacted] for sale. Both charges represent costs incurred by the taxpayer in its business and passed along to its customer. The taxpayer charged tax on the sales price of the [Redacted] sold, but not on these separately stated charges. The Bureau argued that these charges are part of the sales price subject to tax and held each instance of these charges subject to tax.

The taxpayer has protested the Bureau's imposition of tax on these two types of charges, disagreeing that these charges are part of the sales price subject to tax. On the freight in charges, the taxpayer points to a specific exclusion from the sales price for freight charges to the consumer (Idaho Code § 63-3613(b)(7)). In addition, the taxpayer argues that both charges are costs of doing business that are passed along to the customer without any markup resulting in no profit on these charges. The taxpayer agrees with the remainder of the adjusted audit findings.

Sales tax is imposed on all retail sales of tangible personal property at 6 percent of the sales price (Idaho Code § 63-3619). The term "sales price" is a defined term for purposes of the sales tax and its definition is generally divided into two major sections, those items that are included and those items that are not included (Idaho Code § 63-3613 in relevant part):

63-3613. Sales Price (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or

has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

2. The cost of materials used, labor or service cost, losses, or any other expense.

3. The cost of transportation of the property prior to its sale.

4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

(b) The term "sales price" does not include any of the following:

1. Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.

2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a "new manufactured home" or a "modular building" as defined herein.

3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.

5. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

6. The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

7. Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.

The taxpayer argues that because the two types of charges in question do not result in a profit for the business, they should not be subject to tax; however, the definition of “sales price” does not take that factor into consideration. In fact, subsection (a) is broadly inclusive specifically noting that the sales price should not be reduced for the cost of the item sold, labor or service costs, or any other expense. With such a broad base from which to start, it must be shown that there is a specific exclusion in subsection (b).

For freight in charges, the taxpayer relies on the exclusion in subsection (b)(7) above; however, this exclusion applies to “delivery and handling charges for transportation of tangible personal property to the consumer.” The taxpayer is not the consumer of goods that become part of its inventory; its customer is the consumer. In addition, the specific inclusion in subsection (a)(3) of “transportation of the property prior to its sale” further supports the Bureau’s conclusion.

With respect to charges for labor costs to prepare inventory for sale, the taxpayer has provided no specific statutory basis for why those charges should be excluded from the sales price subject to tax. In reviewing subsection (b), the Commission does not find any applicable exclusion either.

With the above under consideration, the Commission agrees with the Bureau and concludes that the taxpayer should have collected sales tax on both types of charges to its customers.

Finally, the Commission approves of the Bureau’s imposition of interest as appropriate per Idaho Code § 63-3045(6).

THEREFORE, the Notice dated September 30, 2011, and directed to [Redacted] is AFFIRMED by this decision as adjusted by the Bureau after the protest.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$13,735	\$0	\$2,225	\$15,960

Interest is calculated through January 10, 2014, and will continue to accrue until the entire liability has been paid.

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.
