

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25282 and 25283
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	
	)	
	)	

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On June 29, 2012, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued Notices of Deficiency Determination (Notices) to [Redacted] (taxpayer) proposing sales tax, use tax, penalty, and interest for the periods April 1, 2007, through March 31, 2010, and December 1, 2007, through March 31, 2010, respectively, in the total amounts of \$45,600 and \$2,453 respectively.

On August 30, 2012, the taxpayer filed a timely appeal and petition for redetermination of both Notices stating several issues on which it disagreed with the findings. The Commission is fully apprised of the audit findings and the taxpayer's objections. Further, it has considered information obtained at an informal hearing requested by the taxpayer and held on January 8, 2013. Finally, the Commission has considered information received from the taxpayer following the hearing. For the reasons that follow, the Commission upholds the audit findings.

Background

The taxpayer is a corporation which operates two [Redacted] in Idaho. In addition, it sells parts and accessories, as well as service. One of its locations was remodeled during the period under audit. The Bureau conducted a routine audit of the taxpayer's business locations for the purpose of determining sales and use tax law compliance.

### Applicable Tax Law

In Idaho, the sale, purchase, and use of tangible personal property is taxable unless an exemption applies. A retailer can buy resale inventory without owing or paying tax. For purchases that are taxable, 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. Charges for improvements to real property are not defined as retail sales subject to tax. Those who improve real property are responsible for tax on the purchase or use of the materials incorporated (Idaho Code §§ 63-3609, 63-3612, and 63-3621).

Idaho-registered retailers doing business in this state have an obligation to collect sales tax on sales that do not qualify for an exemption (Idaho Code §§ 63-3610, 63-3611, and 63-3619). A retailer can make sales of motor vehicles tax exempt if the buyer is a non-resident and complies with certain conditions (Idaho Code § 63-3622R). An exempt sale under these circumstances must be documented by a Commission certificate, Form ST-104MV. When this form is filled out by the buyer for a valid exemption and is kept by the retailer, the retailer has no obligation to collect tax (IDAPA 35.01.02.101.05; 35.01.02.102.06.c; and 35.01.02.107.10.b).

The Commission enforces the provisions of the Sales and Use Tax Act and adopts rules relating to its enforcement. Determining compliance with the statutes is predicated on the taxpayer having sufficient and complete records related to purchases and sales. These records are expected to be maintained by the average prudent businessperson (Idaho Code § 63-3624 and IDAPA 35.01.02.111).

### Audit Findings

The taxpayer made tax-exempt vehicle sales that it believed were allowable, and some of them were accompanied by exemption claim Form ST-104MV. In all cases, the buyers claimed a non-residency exemption, but the auditor denied the claims as invalid.

As noted, one of the retail locations was renovated during the period examined. The auditor determined that not all of the renovations were improvements to real property. Some of the additions to the premises retained the characteristics of tangible personal property, thus obligating the taxpayer (i.e., buyer) to pay a sales tax to the retailers on the purchase of the property, or to pay a use tax to the state thereafter. The auditor found a considerable liability in an examination of asset additions related to the renovation.

The taxpayer bought and displayed a collection of vehicle accessories which, according to the auditor, it treats as depreciable assets. The auditor held these as taxable because they were not part of a resale inventory, and no other exemption applied.

### Taxpayer's Protest and Analysis

With respect to tax exempt sales denied by the auditor, the taxpayer states that it had sufficient documentation that validated the buyers' non-residency claims.

A couple with the surname [Redacted] did not fill out the required Form ST-104MV. It signed another form irrelevant to the exemption it sought, but provided no attestations on that form. The taxpayer believes that the information provided on the financing documents, indicating [Redacted] residency, is sufficient for the non-residency exemption. The auditor determined that both buyers have Idaho driver's licenses, and filed resident income tax returns in the year of purchase, prior years, and all available years since. In the auditor's opinion the

absence of Form ST-104MV was not offset by information sufficient to dispel doubt as to Oregon residency. The Commission agrees.

A couple with surnames [Redacted], and said to be siblings, jointly purchased a vehicle. [Redacted] admits to Idaho residency, but the taxpayer states that [Redacted] needed to be on the title because she was necessary for financing purposes. Her brother, [Redacted], an [Redacted] resident, would be the “true” owner and the vehicle would be registered and titled in [Redacted]. Form ST-104MV was signed by [Redacted], but the auditor required signatures from both title holders in order for the tax exempt sale claim to be valid. As an Idaho resident owner of the vehicle named on the title, the sale cannot be said to be an exempt sale to a non-resident.

The taxpayer’s objection to a liability with respect to a purchase by a couple with the surname [Redacted] is unnecessary, because while the auditor captured the transaction on the workpapers, there is no liability associated with it. Auditors routinely place a “0” when originally questioning a transaction and later determining the transaction to be non-taxable. Such is the case on this transaction.

The taxpayer believes that its renovation contractor is responsible for any tax on materials it used on the job. This, states the taxpayer, is consistent with its understanding of the contracting process relative to sales and use tax. However, an examination of the workpapers fails to find any transactions held taxable that involve the contractor.

As part of its renovation plans, the taxpayer bought tangible personal property that it had the contractor install. The materials were bought from non-registered out-of-state vendors who justifiably did not charge tax. The taxpayer believes that the contractor owes a tax on this property due to its involvement in the installation. Whether or not the materials became part of the real estate, the taxpayer has no available statutory exemption from owing tax upon storage in

Idaho. Since this property did not become part of the real estate, the contractor has no statutory obligation for tax despite its installation.

Regarding the display of parts and accessories the auditor determined were not tax-exempt resale inventory, the taxpayer states that at the end of each model season it does sell the display items as used goods. Thus, it believes that a resale exemption should apply for the purchase.

Resale goods can be displayed and demonstrated without sales tax consequences, but it is apparent that the taxpayer did not classify the purchases as inventory, as the auditor located them on an asset schedule. The fact that they were later sold is not sufficient evidence to classify them as inventory and allow a reseller's exemption. At the hearing the Commission asked that the taxpayer provide some indication that it did not claim a depreciation expense for these assets on its business income tax returns. The taxpayer's follow-up correspondence does not address this issue.

The United States Supreme Court in *Commissioner V. National Alfalfa Dehydrating and Milling Co.*, 417 U.S. 134 (1974), stated that:

This court has observed repeatedly that, while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, *Higgins V. Smith*, 308, U.S. 473, 477, 84 L.Ed. 406, 60 S. Ct. 355 (1940); *Old Mission Portland Cement Co. v. Helvering*, 293 U.S. 289, 293, 79 L.Ed. 367, 55 S. Ct. 158 (1934); *Gregory V. Helvering*, 293 U.S. 465, 469, 79 L.Ed. 596, 55 S. Ct. 266, 97 ALR 1355 (1935), and may not enjoy the benefit of some other route he might have chosen to follow but did not.

To determine if liability existed with respect to the taxpayer's purchases other than assets, the auditor examined transactions within particular timeframes and projected the error rates against other timeframes, or the total value of transactions across the audit periods. The taxpayer

argues that the time periods used resulted in unsuitable samples, and that the periods were not representative of the audit period.

The auditor says that the taxpayer did not raise an objection regarding the sampling methodology during the fieldwork. Further, she believes that the records were not conducive to another approach because they were incomplete or, in her judgment, could not be determined to be complete. Although the taxpayer brought its dissatisfaction to the attention of the Commission during the hearing, there was no resolution to further refine the methodology.

Finally, most elements of each audit's findings are based on a complete review of records, such as asset purchases, rather than an error rate projected on a record sample. In the auditor's judgment there was no guarantee that a material difference would have been found, had the methodology been different for these sample-based test areas where the liability was relatively low. Based on the inability of the auditor to trace many of the transactions to source records for lack of reasonable organization, additional examination may well have resulted in a greater liability.

The length of time both audits took to complete affects interest accrual to the disadvantage of the taxpayer. Both parties admitted delays. The taxpayer believes that the interest accrued is therefore unreasonable. The Commission notes however, that the taxpayer acknowledges much of the liability, yet as of this date, it has not made any payment toward that liability. It could have significantly lowered the accrual of interest by making one or more prepayments, none of which would have prejudiced its case before the Commission or a district court. Idaho Code § 63-3045(6)(a) states, "Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest." Thus, a non-prejudicial prepayment could have lowered the tax subject to future interest and would have been

returned with interest if the taxpayer prevailed in its disagreement with the Commission, or was later held blameless by a court.

The taxpayer also objects to the imposed penalties. The taxpayer has an audit history with the Commission, and the latest compliance errors justify the negligence penalty.

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 deficiencies prepared by the Bureau to be an accurate representation of the taxpayer's sales and use tax liability for the periods April 1, 2007, through March 31, 2010, and December 1, 2007, through March 31, 2010. An adjustment of \$162 in tax for the audit of [Redacted] was made in the taxpayer's favor. It results from using a corrected number of months on which an error rate was projected. A reduction in tax results in a penalty and interest reduction as well.

As noted, the Bureau added interest and penalty to each deficiency. The Commission finds both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through September 9, 2013, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notices dated June 29, 2012, are 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:

[Redacted] <u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$35,597	\$1,781	\$9,434	\$46,812

[Redacted] <u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,802	\$90	\$415	\$2,307

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.  
  
\_\_\_\_\_