

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25379
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On August 30, 2012, 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) for the period January 1, 2009, through December 31, 2011, proposing additional sales tax, use tax, interest, and penalty in the total amount of \$4,259. A timely protest and petition for redetermination was received on October 31, 2012.

At the taxpayer's request, the Commission held an informal hearing via telephone on March 8, 2013. The Commission, having reviewed the entire file and considered the information obtained during the hearing, hereby issues its decision that the Notice should be modified in the taxpayer's favor.

Background and Applicable Tax Code

The taxpayer worked from her facility in a business dedicated to advising [Redacted] on topics ranging from [Redacted]. According to the auditor, the taxpayer was operating a [Redacted] facility and was obligated to collect tax from her customers for its use.

Included in the definition of sales subject to tax, the following statute is relevant to the facts presented:

- Sale. (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.
- (2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:...

(f) The use of or the privilege of using tangible personal property or facilities for recreation (Idaho Code § 63-3612, excerpted in relevant part).

The auditor allocated taxpayer revenue between what she believed to be non-taxable training/consultation charges and facility use charges, in order to assert a liability. Instructional fees are exempt per IDAPA 35.01.02.129.03.

Another portion of the liability results from an unresolved sales figure reconciliation. Auditors routinely compare gross sales reported on sales tax returns to sales reported for income purposes, and look for evidence to determine if material differences are due to unreported taxable sales.

There were use tax liability findings as well. If an Idaho buyer of tangible personal property does not or cannot pay sales tax to the vendor, the buyer owes a use tax directly to the state, unless an exemption applies to the purchase. Payment of use tax extinguishes the sales tax obligation (Idaho Code § 63-3621). The auditor held certain untaxed purchases liable for use tax.

Analysis and Conclusion

The Commission agrees with the taxpayer that the fees charged for private consultations are non-taxable because there is no contemporaneous use of a facility for [Redacted], nor is there ever an opportunity for clients or customers to use the business location for a [Redacted] purpose. While there is [Redacted] equipment, its use is limited to the demonstration of technique, rather than to the achievement of a benefit one would get through [Redacted]. Clients benefit from watching the taxpayer demonstrate the use of the equipment, or from being positioned properly by the taxpayer [Redacted], and transferring learned techniques to their [Redacted]. Thus, liability for this issue is removed for the purposes of this decision.

Other issues originally discussed in the audit findings or the taxpayer's protest were left unresolved or uncontested. According to the auditor, there was a general agreement with all issues other than the one associated with the use of a [Redacted] facility. Nothing other than that issue was raised during the hearing.

The remaining liability was further reduced by taxpayer payments. Partial payments are applied first to interest, next to tax and finally to penalty (IDAPA 35.02.01.140.01). Since the prepayments were sufficient to cover more than the interest and tax, only a portion of the penalty remains (Idaho Code § 63-3046).

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following penalty in the amount of \$86

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.
