

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

In the Matter of the Protest of )  
[Redacted] ) DOCKET NO. 25414  
 )  
 )  
Petitioner. ) DECISION  
 )  
\_\_\_\_\_ )

On May 3, 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], Individually as a Corporate Officer and [Redacted], Responsible Person, and [Redacted], LLC (taxpayer) proposing sales tax, use tax, and interest for the period February 1, 2009, through December 31, 2011, in the total amount of \$5,722.

On June 26, 2012, the taxpayer filed a timely appeal and petition for redetermination of the Notice stating that it disagreed with some of the audit findings. With a check dated October 30, 2012, the taxpayer made a partial payment to the extent that it agreed with the Bureau's findings. On December 11, 2012, believing it could no longer resolve the remaining disputed amounts, the Bureau sent the audit file to the Commission's Legal and Tax Policy Section. The Commission wrote to the taxpayer on December 12, 2012, extending rights to an informal hearing to discuss any disagreements. As of the date of this decision, the taxpayer has not replied. For the reasons that follow, the Commission upholds the audit findings.

### Background and Audit Findings

The taxpayer operates a [Redacted] in Idaho. Typically, a [Redacted] will make taxable sales of tangible personal property to its customers, and will also buy and use goods that are subject to tax.

The Bureau's auditor found untaxed purchases it believed were subject to tax. Further, the auditor found a variance between the gross receipts amount the taxpayer reported on business income tax returns, and periodic sales/use tax returns filed with the Commission. Since the auditor could not determine why the income tax return figures were in excess of the aggregate figures for sales tax purposes, he held the excess as taxable. Finally, the auditor noted that some taxable sales made by the business were not accounted for in the sales tax remittance. The taxpayer paid tax to the state only when it collected on its accounts receivables rather than in the month following the sale.

### Relevant Tax Code and Administrative Rules

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).

Sales tax charged by retailers must be remitted on an accrual basis, not on a cash basis:

**Imposition and Rate of the Sales Tax.** An excise tax is hereby imposed upon each sale at retail at the rate of six percent (6%) of the sales price of all retail sales subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

(a) The tax shall apply to, be computed on, and collected for all credit, installment, conditional or similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged (Idaho Code § 63-3619).

Sales tax must be collected on an accrual basis. The tax is owed to the state at the time of sale, regardless of when the payment is made by the customer (IDAPA 35.01.02.063.01).

Sales Tax. Sales tax is imposed, computed and collected at the time of sale, without regard to the provisions of any contract relating to the time or method of payment. In the case of installment sales, sales on account, or other credit sales, the seller shall report as a taxable sale the entire sales price for the month in which the sale is made. No part of the sales tax may be deferred until the time the retailer actually collects payment from the buyer. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. Lease or rental payments are taxable during the month or other period for which the property is leased or rented (IDAPA 35.01.02.105.01.a.).

An Idaho retailer's status carries with it a requirement to keep records that are adequate for examination by Commission delegates for the purpose of determining compliance with the tax laws.

Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction (Idaho Code § 63-3624(c)).

Idaho law imposes an obligation that retailers produce and maintain complete records that are reasonably retrievable and amenable to customary verification methods.

01. In General. Every retailer doing business in this state and every purchaser storing, using, or otherwise consuming in this state tangible personal property shall keep complete and adequate records as may be necessary for the State Tax Commission to determine the amount of sales and use tax for which that person is liable under Title 63, Chapter 36, Idaho Code.

a. Unless the State Tax Commission authorizes an alternative method of record keeping in writing, these records shall show gross receipts from sales or rental payments from leases of tangible personal property, including any services that are a part of the sale or lease, made in this state, irrespective of whether the retailer or purchaser regards the receipts to be taxable or nontaxable; all deductions allowed by law and claimed in filing the return; and the total purchase price of all tangible personal property purchased for sale or consumption or lease in this state.

b. These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account, together with all schedules or working papers used in connection with the preparation of tax returns.

c. For taxpayers that maintain the required records in both a machine-sensible and a hard-copy format, that taxpayer shall make the records available to the State Tax Commission in machine-sensible record format upon the State Tax Commission's request. Machine-sensible records must be maintained in the original format for the same time periods as required of hard-copy records outlines in Subsection 111.04. "Machine-sensible record" is a collection of related information in an electronic format. This does not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche or storage-only imaging systems (IDAPA 35.01.02.111).

#### Taxpayer Protest, Analysis, and Conclusion

The Commission agrees with the audit finding that asserts liability for the purchase of goods for which tax was due, but was not paid. The auditor's narrative indicates that the taxpayer agrees on this point.

While the taxpayer disagrees that its cash method of accounting for sales tax is incorrect, it has not shown any statutory basis for its view. The auditor included charged but unremitted tax amounts in the audit findings, and the Commission agrees this is appropriate.

The taxpayer and its accountant disagree on the reliability of the software-generated sales tax report totals, that the auditor concluded vary from gross receipts for income tax purposes. The Commission agrees with the auditor that taxpayer record keeping and controls were not sufficient to determine precisely the additional liability. The Commission cannot reward a taxpayer for lacking complete and verifiable paper trails, and to the extent that the auditor made a reasonable effort to determine a liability based on what was available, it agrees with the

conclusion. The burden lies with the taxpayer in the absence of complete records to show that the Bureau's findings are in error.

The Commission and the auditor do not contend that the taxpayer or its staff, responsible for record keeping, have been willfully abusive of the tax law. The tax law does, however, require that responsible parties be held accountable for failures with respect to following the tax law. Therefore, the Commission does not object to the inclusion of corporate officers and responsible parties in this or similar cases:

Corporate Officers Duty to Pay Sales Tax. Individuals including corporate officers and employees with the duty to cause a corporation or a limited liability company to file a sales tax return or to pay sales tax when due, or any partnership member or employee with such duty, shall become liable for payment of the tax, penalty and interest due from the corporation or partnership if he shall fail to carry out his duty. Any such responsible individual shall have the defenses, remedies and recourse provided in Sections 63-3045, 63-3049, 63-3065 and 63-3074, Idaho Code, and shall be afforded notice and opportunity to be heard on the question of such liability (IDAPA 35.01.02. 118.01).

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.)

Financial hardship is an available defense for a taxpayer. The Commission has the authority to abate or extinguish a liability based on the taxpayer's circumstances, but the taxpayer is required to submit the necessary documentation for the Commission to review and verify. Relief can be granted if the Commission believes it to be warranted.

c. Economic hardship of the taxpayer.

i. The Commission may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses.

ii. An offer to settle based on economic hardship generally will be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the Commission can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's individual facts and circumstances (IDAPA 35.02.01.500.01.c)

Had the taxpayer asked for a hardship consideration as part of the informal hearing process, the Commission would have initiated the fact-finding process. There are no guarantees with respect to the success of a hardship claim, but the taxpayer may request consideration from a Commission employee who will be assigned to collect on this liability if it is not appealed or paid.

The Bureau added interest to the sales and use tax deficiency per Idaho Code § 63-3045. 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. The subsequent amount due accounts for the taxpayer's partial payment of \$1,420, posted as of November 1, 2012. Partial payments are applied first to accrued interest and then to tax (IDAPA 35.02.01.140). Remaining tax is then subject to the accrual of interest until paid.

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonable representation of the taxpayer's sales and use tax liability for the period February 1, 2009, through December 31, 2011.

THEREFORE, the Notice of Deficiency Determination dated May 3, 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, and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$4,369	\$132	\$4,501

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' 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.  
  
\_\_\_\_\_