BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 24727
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

On November 4, 2010, 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 sales tax, use tax, penalty, and interest for the tax periods November 1, 2007, through October 31, 2010, in the total amount of $13,749.

On December 28, 2010, the taxpayer filed a timely appeal and petition for redetermination of the Notice. Following the petition, the taxpayer provided the Bureau with additional documentation. On December 7, 2011, the Bureau revised the workpapers based upon the additional documentation received and forwarded a copy to the taxpayer for review. As a result, the liability was reduced to $12,738.

No further response was received from the taxpayer, so the Bureau forwarded the appeal to the Commission's Legal/Tax Policy Section for review of the remaining items under protest. At the taxpayer's request, the Commission held an informal hearing on July 9, 2013. Present at the hearing were Commissioner, [Redacted] Deputy Attorney General, [Redacted] and Tax Policy Specialist, [Redacted]. The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing and, thereafter, and hereby issues its decision upholding the adjusted audit findings.

Background and Audit Findings

[Redacted] provides [Redacted] equipment and services for [Redacted]. The equipment offered includes [Redacted]. The taxpayer then provides a variety of ongoing [Redacted] services as mandated for each [Redacted]. The [Redacted] make monthly payments directly to the taxpayer for all equipment and [Redacted] services.

The Bureau determined that the monthly payments have a taxable element related to the device rental and a nontaxable element related to the monitoring service. The Bureau concluded that the portion of the monthly payment related to the device rental was subject to sales tax as a rental of tangible personal property from the taxpayer to the [Redacted] (Idaho Code § 63-3612(h)), and the portion of the monthly payment related to [Redacted] was not subject to sales tax. The Bureau examined the taxpayer's service provider contracts to establish the value of the rental equipment.

Summary of Taxpayer's Protest

The taxpayer protested the Bureau's imposition of tax for the rental of the [Redacted]s, stating that although the [Redacted] wear the [Redacted]. The protest states that these devices are used exclusively by the taxpayer for the purpose of [Redacted] the [Redacted] in a way that satisfies the [Redacted] requirements.

With respect to [Redacted], the protest concedes that these transactions are a rental agreement, and that the only service provided by the taxpayer is [Redacted]. However, the taxpayer did protest the projection of the errors related to the [Redacted] for the entire audit period because they only began offering them in March 2009, about halfway through the audit period. The Bureau adjusted the workpapers to reflect the appropriate periods.

Applicable Tax Law and Analysis

Idaho imposes a tax on the sale of tangible personal property. The Sales Tax Act includes in the definition of sale the lease or rental of tangible personal property: .

> **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 . . .
> (h) The lease or rental of tangible personal property. . (Idaho Code § 63-3613).

The taxpayer's argument that this is not a rental because the [Redacted] does not use, possess, or control the [Redacted] is not supported by the facts. Once a device is installed, the [Redacted] takes sole possession of the device. While the [Redacted] does not have complete control of the device [Redacted], they take it with them everywhere they go which certainly indicates a degree of control. In addition, the purpose of the device for the [Redacted] is to meet the requirements of the [Redacted], an important use by [Redacted]. Limitations upon use, possession, and control exist in almost any rental or lease contract. The Commission does not believe the limitations placed upon the device in this case warrant different treatment than any other rental of tangible personal property.

Therefore, the Commission agrees with the Bureau that a sale of tangible personal property between the taxpayer and the [Redacted] has taken place. This determination is further evidenced by the fact that payment for the leased devices was collected in cash, directly from the [Redacted] prior to the installation of the devices. The [Redacted] has no exemption available and the taxpayer should have collected tax on the sale.

The Commission also supports the Bureau's conclusion that the lease payments have both a taxable and a nontaxable element to them. IDAPA 35.01.02.11.02.c states:

> When a mixed transaction involves the transfer of tangible personal property and the performance of a service, both of which are consequential elements whose

> costs may be separately stated, then two (2) separate transactions exist. The one attributable to the sale of tangible personal property is subject to sales tax while the other is not.

The Commission finds the revised deficiency prepared by the Bureau to be a reasonably accurate representation of the taxpayer's sales and use tax liability for the period November 1, 2007, through October 31, 2010.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions and found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through April 17, 2014, 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 November 4, 2010, is hereby APPROVED as adjusted, in accordance with the provisions of this decision, and is AFFIRMED as modified by this decision. IT IS ORDERED that the taxpayer pay the following tax, penalty, and interest:

TAX	PENALTY	INTEREST	TOTAL
$11,012	$551	$2,069	$13,632

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 _____ 2014.

IDAHO STATE TAX COMMISSION

_____

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.

_____