

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 24731  
 )  
 )  
Petitioner. ) DECISION  
 )  
\_\_\_\_\_ )

On September 19, 2011, 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] and [Redacted]. (taxpayer), proposing sales tax, use tax, penalty, and interest for the periods August 1, 2008, through March 31, 2009, in the total amount of \$162,232.

On November 21, 2011, the taxpayer filed a timely appeal and petition for redetermination of the Notice. At the taxpayer’s request, the Commission held an informal hearing on January 14, 2014. 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**

The taxpayer owned and operated a [Redacted] facility located between [Redacted] and [Redacted], Idaho. The Bureau conducted a routine audit of the taxpayer’s business for the purpose of determining sales and use tax law compliance. The Bureau indicated that, during the audit process, the taxpayer had not provided most of the requested documentation and, as a result, the Bureau was forced to assess a liability based upon the limited documentation that was available.

During the informal hearing, the taxpayer identified several areas with which it disagreed and the Commissioner asked the taxpayer to provide additional documentation supporting its stance. Very little, outside of what was provided in the hearing, was submitted. The Bureau has made adjustments based upon the documentation provided. Each of the remaining issues are being addressed separately in the protest analysis.

### **Idaho Tax Code Relevant to Audit Findings**

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies (Idaho Code § 63-3619). Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act (emphasis added):

**63-3612. 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:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

(b) **Furnishing, preparing, or serving food, meals, or drinks** and nondepreciable goods and services directly consumed by customers included in the charge thereof.

(c) A transfer of possession of property where the seller retains the title as security for the payment of the sales price.

(d) A transfer of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) **Admission to a place or for an event in Idaho**, provided that an organization conducting an exempt function as defined in section 527 or exempted by section 501(c)(3) of the Internal Revenue Code, as incorporated in section 63-3004, Idaho Code, and collecting any charges for attendance at the aforementioned event, shall not have those admission charges be defined as a sale if the event:

(i) Is not predominately recreational or commercial; and

(ii) Any included entertainment value is minimal when compared to the charge for attendance; and

(iii) Such entity has paid sales and use tax on taxable property or services used during the event.

**(f) The use of or the privilege of using tangible personal property or facilities for recreation. . .**

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. Payment of sales tax to an Idaho-registered vendor extinguishes the use tax liability. Therefore, purchases subject to use tax are only taxable when the purchaser buys goods without paying tax to the seller. The use tax rate is the same as the sales tax rate and is due on the fair market value of the property. A recent sales price is presumptive evidence of the value.

### **Protest Analysis**

#### **Award Ceremony “Sales”**

[Redacted] holds an annual awards banquet at the end of each season. Tickets are sold for admission to the banquet, allowing the buyer the right, or privilege, to attend the event. A meal is also included as part of the admission price.

Idaho Code § 63-3612(2)(e) includes in the definition of a sale “admission to a place or for an event in Idaho.” IDAPA 35.01.02.030 states that “charges for admission to a place or event in Idaho are taxable. The charge to gain access to a place or event is subject to tax whether such charge is designated as a cover charge, minimum charge or any such similar charge.” Idaho Code § 63-3612(2)(e) includes in the definition of a sale “Furnishing, preparing, or serving food, meals, or drinks.”

During the hearing, the taxpayer stated that it paid sales tax to the hotel that furnished the meals and drinks for the event. Because the entire charge for the banquet is taxable, the taxpayer should have purchased the meals and drinks exempt for resale. Consequently, the Commission would have allowed a credit for sales tax paid; however, the taxpayer did not provide evidence

adequate enough to establish that sales tax had been paid. The Commission agrees with the Bureau that the entire charge for the banquet is taxable.

### **Advertising**

According to the Bureau, advertising packages sold by [Redacted] include having your ad posted on a [Redacted] and an ad in the [Redacted] annual publication. The purchaser of these packages also receives [Redacted], and other taxable items as a part of the package. The Bureau held that the taxpayer should be collecting sales tax on a portion of the advertising package for the sale of items that fall within the definition of a taxable sale. (Idaho Code § 63-3612)

Transactions that fall within the definition of a sale are taxable when the purchaser is the consumer. Included within this definition are “fees paid for admission to a place or for an event in Idaho, and the “furnishing, preparing, or serving food, meals, or drinks.” Idaho Code §§ 63-3612(2)(b) and (2)(e).

The Bureau found that the average retail sales price of the taxable items included in the advertising packages was approximately 60 percent of the total cost of the advertising package, but only 25 percent of the advertising package was held taxable to account for any over inflation of the retail price of the taxable items. During the informal hearing, no protest was raised regarding the taxability of these items; however, it was argued that the percentage attributed to the sale of admission tickets and season passes, food, and other taxable items was overstated. The discussion centered on the value of a ticket and the taxpayer offered to provide additional information to support this stance, none of which was submitted. The taxpayer did not provide evidence adequate enough to establish that the amount asserted by the Bureau was overstated; therefore, the Commission upholds the Bureau’s findings.

## **Entry Fees for [Redacted]**

The Bureau determined that entry fees for [Redacted] were recreational and subject to sales tax. More specifically, the Bureau asserted that the entry fees for [Redacted], are all fees for the use of or the privilege of using tangible personal property or facilities for recreation as included within the definition of “sale” found in Idaho Code § 63-3612(2)(f) and are therefore taxable.

The Bureau determined that [Redacted] and [Redacted] entry fees did not fall within this definition, operating under the understanding that these [Redacted] were entered into with the objective of making a profit. The taxpayer disagreed with the imposition of sales tax on the [Redacted] fees, arguing that some of these [Redacted] are also for a [Redacted]. The taxpayer did not provide evidence or a legal argument adequate enough to establish that any of the [Redacted] that were classified as [Redacted] should have been [Redacted]; therefore, the Commission upholds the Bureau’s findings.

[Redacted]

## **Vendor Sales**

The taxpayer holds an annual [Redacted] event, the [Redacted]. The Bureau held any untaxed sales associated with the [Redacted] subject to sales tax, stating that no explanation or supporting documentation was provided during the audit explaining the nature of these transactions. At the informal hearing, the taxpayer indicated that these transactions were sales of entries into the [Redacted], exhibitor fees, and admissions to the [Redacted]. The taxpayer was asked to provide a description of all untaxed sales related to the event and a description of what was received in return for the fee.

The Commission acknowledges that an adjustment might have been approved for exhibitor fees and [Redacted], if it was determined that the untaxed sales were only for sale, lease, or rental of real property, rather than a sale or lease of tangible personal property or admission to the event. IDAPA 35.01.02.025 specifies that the sale, lease, or rental of real property is not subject to sales tax. Unfortunately, the taxpayer did not provide the requested information, and as a result, no adjustment could be made to the proposed liability; therefore, the Commission upholds the Bureau's findings.

### **Use Tax**

The Bureau completed an examination of purchases made by the taxpayer. Those purchases which were taxed by the seller or were not taxable by the nature of the item (ie; freight or repair labor) were not extended as taxable. Those items for which no sales tax was paid to the vendor or no invoices were provided to the Bureau were held subject to use tax. The taxpayer protested the use tax liability asserted, stating that no use tax was due.

In Idaho, the sale, purchase, and use of tangible personal property and certain enumerated services are subject to tax unless an exemption applies. If sales tax is not paid to the vendor, the buyer owes a use tax to the state. The sales and use tax rates are identical, and all states with a sales tax have a complementary, or compensating, use tax requirement. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621).

During the informal hearing, the Commissioner advised the taxpayer that if it had specific invoices on which it believed sales tax had been paid, a copy of that invoice should be submitted for review. The taxpayer did not provide any invoice copies for review. As a result, no adjustment has been made to the amount of use tax asserted; the Commission upholds the Bureau's findings.

## Conclusion

The taxpayer has provided no further evidence to show that amount asserted in the modified Notice of Deficiency Determination is incorrect. Taxpayers are required to keep adequate records. Idaho Code § 63-3624(c) states:

(c) 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.

In addition, Idaho sales tax Rule 111.01 (IDAPA 35.01.02.111.01) states:

**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. (3-30-01)

Idaho sales tax Rule 111.06 (IDAPA 35.01.02.111.06) goes on to state:

**06. Failure of the Taxpayer to Maintain or Disclose Complete and Adequate Records.** Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the State Tax Commission shall:  
(3-30-01)

**a.** Impose any penalty as may be authorized by law. (7-1-93)

**b.** Subpoena attendance of the taxpayer and any other witness when the State Tax Commission deems it necessary or expedient for examination and compel the taxpayer and witness to produce any documents within the scope of its inquiry relating in any manner to the sales and use tax. (3-30-01)

**c.** Enter such other order as may be necessary to obtain compliance with this rule in the future by any taxpayer found not to be in substantial compliance with the requirements of this rule. (7-1-93)

Absent information to the contrary, 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 August 1, 2008, through March 31, 2009.

The Bureau added a penalty to the sales and use tax deficiency. Idaho code § 63-3046(b) states that “if any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency.” The Commission reviewed this addition and found that there is insufficient evidence to infer or prove a fraudulent intent to evade tax. The penalty has been adjusted to a negligence penalty to be consistent with this conclusion.

The Commission’s imposition of a negligence penalty and interest are appropriate per Idaho Code §§ 63-3045 and 63-3046. Interest is calculated through August 29, 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 September 19, 2011, is hereby MODIFIED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$53,038	\$2,652	\$12,623	\$68,313

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.

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