

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25659
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On November 29, 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] (taxpayer), proposing use tax, penalty, and interest for the period March 1, 2010, through August 31, 2012, in the total amount of \$7,736.

On January 14, 2013, the taxpayer filed a timely appeal and petition for redetermination of the Notice. At the taxpayer's request, on February 4, 2014, the Commission held an informal hearing. Present at the informal 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 audit findings.

Background and Audit Findings

The taxpayer was awarded a [Redacted] contract to replace [Redacted] at [Redacted], [Redacted], and [Redacted] in [Redacted] County. The Bureau performed a routine review of the contracts and found that no sales or use tax was paid to the state of Idaho for the [Redacted] that were installed by the contractor. Records reviewed showed that the fully fabricated [Redacted] were sold at retail to the taxpayer, shipped to Idaho, and installed by the taxpayer into real

property in the state of Idaho. The Bureau determined that the [Redacted] were subject to use tax.

Protest

The taxpayer protested the Bureau's determination, stating that [Redacted] sales tax had been paid, by the vendor, on the [Redacted] materials. To support this claim, the taxpayer provided a fax from its vendor, [Redacted], in which the vendor states that it did pay sales tax on the materials it purchased to build the [Redacted]. The taxpayer's invoice for the purchase of the [Redacted] states that the agreed upon pricing includes [Redacted] sales tax. When the vendor was contacted by the Bureau, it clarified that it did not collect sales tax from the taxpayer, but did pay sales tax on its purchase of the materials used to build the [Redacted].

Analysis and Conclusion

For sales and use tax purposes, a contractor improving real property is the consumer of any materials that become part of the realty and owes a sales or use tax on such materials:

All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property (Idaho Code § 63-3609(a)).

Based on the above, if a contractor has used materials in the construction of real property, the contractor will owe sales or use tax. The term "use", as utilized here, is a specially defined term for the purposes of the use tax:

The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax....(Idaho Code § 63-3615(b)).

The taxpayer ordered fully fabricated [Redacted] from an out-of-state vendor, had the [Redacted] shipped to Idaho, and then installed the [Redacted] into real property in the state of Idaho. Since the taxpayer did not pay sales tax on the purchase of the [Redacted], the taxpayer owes a use tax. Payment of use tax extinguishes the sales tax obligation. The rate for sales and use tax are identical. (Idaho Code §§ 63-3612 and 63-3621).

The transaction between the taxpayer and the vendor was a retail sale and, while the Commission acknowledges that the vendor may have paid sales tax in error to the state of [Redacted] for the materials used to build the [Redacted], this does not extinguish the taxpayer's liability to the state of Idaho, nor does it provide a deduction that the taxpayer can take. Idaho Code § 63-3612(a)(2) includes in the sales price subject to sales tax, "the cost of materials used, labor or service cost, losses, or any other expense."

The Commission finds the deficiency prepared by the Bureau to be a reasonable and accurate representation of the taxpayer use tax liability for the period of March 1, 2010, through August 31, 2012.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through October 31, 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 29, 2012, is hereby APPROVED, 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>
\$6,766	\$338	\$1,044	\$8,148

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.
