

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25851
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On May 6, 2013, 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 period June 1, 2009, through May 31, 2012, in the total amount of \$12,143.

On July 3, 2013, 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 December 10, 2013. Present at the informal hearing were [Redacted], [Redacted], and [Redacted] and [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] is a full service [Redacted] with three locations in the state of Idaho. The Bureau conducted a routine audit of the taxpayer's business for the purpose of determining sales and use tax law compliance.

At issue is the imposition of use tax on the taxpayer's use of materials ([Redacted], etc.) in the repair process, but not itemized on the repair invoices. The Bureau identified these items as incidental materials, because they are being expensed by the taxpayer at the time of purchase,

and held the taxpayer's use of these materials taxable if no sales tax was paid upon purchase and no use tax was remitted.

### **Protest & Analysis**

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. 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).

IDAPA 35.01.02.62.01 states that "Persons engaged in the business of repairing, renovating or altering tangible personal property owned by others are required to collect sales tax upon the parts or material required in the repair or renovation of the property." IDAPA 35.01.02.62.04 provides:

**04. Incidental Material.** In some instances because of the small amount of materials used in a repair job, the value of the material may be insignificant to the entire repair cost. For example, incidental amounts of material are sometimes used in repairs made to tires, clothing, watches, and shoes. If materials such as buttons, thread, watch parts, tire valve cores and stems are incidental to the repair they will be taxed when purchased by the repairman. Other examples of materials which are incidental to repairs are touch-up paint and soldering materials used in car repairs. Materials are incidental if they have a value which is insignificant and for which a reasonable retail sales price cannot be readily determined.

As noted above, the Bureau classified these washers, nuts, bolts, and fasteners as "incidental." Again, IDAPA 35.01.02.62.04 states that "Materials are incidental if they have a value which is insignificant and for which a reasonable retail sales price cannot be readily determined." The rule provides the direction that if the materials are incidental to the repair, they should be taxed when purchased. The taxpayer argues that these materials are not "insignificant" or "incidental" as described in IDAPA 35.01.02.62.04 and that a reasonable sales price could be

determined, however, the requirements placed on them by the insurance industry makes it impossible for them to separately state these materials and impose sales tax on them. However, IDAPA 35.01.02.62.03 states that “Repairs, the costs of which are covered by insurance benefits, are treated the same as otherwise described in this rule. Sales tax is to be collected on the parts and materials.” This section makes it clear that even in instances where insurance is paying for the repair, the person doing the repair has a responsibility to collect sales tax on the parts or material required for the repair no differently than it would for any other repair. The person doing the repair also has a responsibility to pay sales tax or remit use tax on the purchase of incidental materials.

The taxpayer’s argument that it would have to hire an additional employee to keep track of each washer, nut, bolt, and fastener used by the business, and the fact that they chose not to, supports the Bureau’s position that these materials, while their value may not be completely insignificant, are being treated as incidental materials to the repair. The taxpayer made the business decision to ignore the materials for inventory tracking purposes. Materials were expensed by the business and left out of any sales documentation related to the final sale to their customer. The actions of the taxpayer indicate that these materials are, in fact, incidental. The taxpayer, in this instance, should be paying sales tax or remitting use tax on the purchase of these materials.

### **Conclusion**

The Commission agrees with the Bureau that the washers, nuts, bolts, and fasteners in question are being treated by the taxpayer as incidental materials. The Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the taxpayer’s sales and use tax liability for the period June 1, 2009, through May 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 sections 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through March 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 May 6, 2013, 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$11,061	\$1,387	\$12,448

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

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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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