

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

|   |   |                  |
|---|---|------------------|
| In the Matter of the Protest of           | ) |                  |
|   | ) | DOCKET NO. 25874 |
| [Redacted],                               | ) |                  |
|   | ) |                  |
| Petitioner.                               | ) | DECISION         |
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On March 21, 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 sales tax, use tax, penalty, and interest for the period June 1, 2008, through May 31, 2011, in the total amount of \$27,798.

On May 23, 2012, the taxpayer filed a timely appeal and petition for redetermination of the Notice. On February 28, 2013, the taxpayer provided additional documentation, which resulted in the revision of the workpapers. On August 9, 2013, believing it could no longer resolve the remaining disputed amounts, the Bureau sent the audit file to the Commission's Legal/Tax Policy Division for resolution. At the taxpayer's request, the Commission held an informal hearing on October 25, 2013. Present at the informal hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Policy Specialists [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 modifying the audit findings.

## Background and Audit Findings

The taxpayer sells [Redacted] and [Redacted] to [Redacted] nationwide. The Bureau conducted a routine comprehensive audit of the taxpayer's business for the purpose of determining compliance with Idaho sales and use tax law. After its review, the Bureau determined that there were errors in sales, extraordinary purchases, and ordinary purchases. The taxpayer raised a few different issues in the protest, each of which was addressed, at least in part, by adjustments done by the Bureau. The remaining issues are addressed separately in the following analysis.

## Protest Analysis

### Resale Certificates

The Idaho Sales Tax Act states that all sales are presumed taxable unless an exemption applies. Idaho Code § 63-3622 provides retailers with specific methods to document exempt sales:

**63-3622. Exemptions -- Exemption and resale certificates -- Penalties.** (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in

the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

The taxpayer protested the Bureau's imposition of sales tax on untaxed sales of items, such as [Redacted], [Redacted], [Redacted], [Redacted] [Redacted], that the Bureau determined

were for consumption by the buyer. The Bureau held that the taxpayer, being involved in the industry, should have known that the buyer would not resell these items and therefore held the sale “taxable as a matter of law”, in spite of the fact that the taxpayer had a valid exemption certificate for the buyer.

Subsection 63-3622(d) states that “when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption.”

The Bureau believed that the sale of items that were going to be consumed rather than resold were taxable as “a matter of law,” in which case, under Idaho Code § 63-3622(g), the presumption would not apply.

These subparts of the statute are not entirely consistent. On one hand, if the purchaser provides a certificate, the seller has no duty or obligation to determine the validity of the claimed exemption, even if the purchaser improperly claimed the exemption. In contrast, a seller must collect the tax if the sale is taxable as a matter of law even if the purchaser has filled out the exemption certificate claiming the exemption. In interpreting statutes, all words of the statute must be harmonized and read together. All sections of the applicable statute must be read together to determine the intent of the legislature. Davaz v. Priest River Glass Co., Inc. 125 Idaho 333, 870 P.2d 1292 (1994). If the statute is ambiguous, then it must be construed to mean what the legislature intended for it to mean. Miller v. State, 110 Idaho 298, 715 P.2d 968 (1986). To determine that intent, not only are the literal words of the statute examined, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history. Lopez v. State Industrial Special Indemnity Fund, 136 Idaho 174, 30 P.3d 952 (2001).

In considering the interpretation of Idaho Code § 63-3622, the Commission must consider the language of the statute by giving effect to every section and construing each section so that it is harmonized with the other sections of the statute. When considering these factors, it is clear that the legislature intended a low threshold for the acceptance of certificates by sellers. Unless the transaction is taxable as a matter of law, the seller has no duty or obligation for the collection of tax. This means that unless the facts show that the seller knows unequivocally that the buyer's purchase is taxable, or if the representations on the invoice and certificate disclose that the claim of exemption is invalid as a matter of law, the certificate will relieve the seller from any potential liability. The seller can rely on the representations of the buyer, even if the representations are not reasonable, and the seller has no duty to question or challenge the representations. The seller can only be held liable if the seller's actual knowledge is such that he knows the buyer cannot claim the exemption at the time of sale or if the purchase is taxable as a matter of law.

The Commission has determined that the taxpayer did not know unequivocally that the buyer who claimed the resale exemption was not purchasing these items for resale and did not have a responsibility to collect sale tax on the sale of these items if a valid resale exemption certificate was on file. The Commission notes that it reaches this conclusion based on the unique set of circumstances presented in this matter.

### **Printing**

The Bureau held the purchases [Redacted].

The taxpayer protested the imposition of tax on the [Redacted] represents the substance of the transaction. The taxpayer maintains that this is a sale of a non-taxable service rather than a sale of tangible personal property.

Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act.

The statute states, in relevant part:

**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. . . . (Emphasis added.)*

IDAPA 35.01.02.54.03 includes in the final sales price subject to sales tax “charges for materials, labor and production of fabrication or typography, author’s alterations, art work, photoengravings, electros, mats, stereotypes, hand or machine composition, lithographic plates or negatives, electrotypes, etc., and binding and finishing services ... whether the various charges are separately stated or not.”

IDAPA 35.01.02.11.02 states that “the fact that the charge for the tangible personal property results mainly from the labor or creativity of its maker does not turn a sale of tangible personal property into a sale of services. The cost of any product includes labor and manufacturing skill.”

The Commission supports the Bureau’s stance that the purchase of [Redacted] free of charge should have been taxed at the time of purchase. The object of the transaction is to get a [Redacted] that the taxpayer can hand out to its customers.

**Conclusion**

The Commission revised the deficiency prepared by the Bureau to exclude all sales in which a properly completed resale exemption certificate had been provided. The Commission upholds the findings with respect to the purchase of [Redacted]. The Commission found the revised deficiency to be a reasonably accurate representation of the taxpayer’s sales and use tax liability for the period of June 1, 2008 through May 31, 2011.

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.

THEREFORE, the Notice of Deficiency Determination dated March 21, 2012, and directed to [Redacted], is hereby APPROVED as 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> |
|------------|----------------|-----------------|--------------|
| \$15,578   | \$779          | \$3,173         | \$19,477     |

Interest is calculated through June 30, 2014, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

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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