

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25946
[Redacted],,)	
)	
Petitioner.)	DECISION
_____)	

On June 7, 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 May 01, 2009, through April 30, 2012, in the total amount of \$6,447.

On July 23, 2013, the taxpayer filed a timely appeal and petition for redetermination of the Notice. At the taxpayer’s request, the Commission held a telephonic hearing on December 12, 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 audit findings.

Background and Audit Findings

[Redacted] provides their customers the ability to [Redacted]. The Bureau conducted a routine audit of the taxpayer’s business for the purpose of determining compliance with Idaho sales and use tax law.

At issue is the imposition of Idaho sales tax on a convenience fee for payments made over the phone. The taxpayer does not have a requirement on the method of payment their customers must use; they are allowed to make monthly payments at the store, online, or over the phone.

No additional fees are assessed for customers opting to pay at the store or online. However, if the customer opts to pay by credit card over the phone, a mandatory convenience fee is charged. The Bureau determined that the mandatory convenience fee was part of the sales price, and therefore, is subject to sales tax.

Summary of the Taxpayer's Protest

The taxpayer protested the Bureau's imposition of a sales tax for the convenience fee, stating that these fees are more closely related to finance charges rather than services agreed to be rendered as part of the sale. The taxpayer stated that the fee, charged only if a payment is made over the phone, was to cover any risks associated with the credit card not being present and the labor costs incurred to obtain the credit card information. The taxpayer argues that the total sales price is agreed to at the time a financing agreement is signed. Therefore, the fee is not tied to the sales price. The subsequent mandatory convenience fee is only charged for optional credit card payments that are made by telephone. The taxpayer sees this as a finance charge related to a payment option that should not be considered as part of the final sales price.

Applicable Tax Law and Analysis

Idaho imposes a tax on the sale 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 (Idaho Code §63-3612).

The Sales Tax Act defines "sales price" excerpted in relevant part below.

Sales price. -- (a) The term "sales price" means the total amount for which tangible personal property, *including services agreed to be rendered as a part of the sale*, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold....

2. The cost of materials used, labor or service cost, losses, or any other expense (Idaho Code §63-3613, emphasis added).

The foregoing includes “services agreed to be rendered as part of the sale”, as well as labor, service cost, and “any other expense” in the amount subject to tax. By including the words, “services agreed to be rendered,” the legislature expressly indicated that some services were intended to be part of the sales price subject to tax even if the charge for such services is stated separately from the charge for the property.

The Commission has promulgated IDAPA 35.01.02.43.02 which also supports the statute:

02. Services Agreed to Be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term “sales price” is defined by Section 63-3613, Idaho Code, to include “services to be rendered as a part of the sale.” The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. . .

The taxpayer refers to the disputed charges as more closely related to “finance charges.” The amount charged for “finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales” is excluded from the sales price per Idaho Code § 63-3613 (b)(6). Generally, a finance charge is the amount owed to a lender by a purchaser-debtor to be allowed to pay for goods purchased over a series of installments, as opposed to one lump sum at the time of sale or billing.

IDAPA 35.01.02.43.03 specifically excludes certain charges related to financing.

03. Charges Not Included. The sales price does not include charges for interest, carrying charges, amounts charged for optional insurance on the property sold, or any financing charge. These various charges may be deducted from the total sales price if they are separately stated in the contract. In the absence of a separate statement, it will be presumed that the amount charged is part of the total sales price.

The Commission finds that the fee, in this case, is not a charge for interest. It is not a carrying charge which is defined as “interest on an unpaid balance in a charge account”

(Scribner-Bantam English Dictionary, New York, New York, 1979.) It is not an amount charged for optional insurance on the property sold. It is not a finance charge.

It is a convenience fee, charged only for credit card payments over the phone. No fee is assessed for credit card payments made online or in person. The Commission finds that the taxpayer is charging to their customer to cover their own labor costs, such as the time for an employee to talk to the customer, identify the account, enter the credit card info in the credit card devise, verify payment and provide a receipt. These are all services rendered as part of the sale, not finance charges.

Other issues originally discussed in the audit findings were left uncontested. According to the Bureau, there was a general agreement with all issues other than the convenience fee. Nothing other than that issue was raised during the hearing.

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 May 1, 2009, through April 30, 2013.

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 sections 63-3045 and 63-3046. The taxpayer paid tax and interest in full, no additional payment will be expected.

THEREFORE, the Notice of Deficiency Determination dated June 7, 2013, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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.
