

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25979
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On June 27, 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 January 1, 2010, through December 31, 2012, in the total amount of \$13,861.

On August 23, 2013, the taxpayer filed a timely appeal and petition for redetermination of the Notice. The Commission wrote to the taxpayer on December 6, 2013, advising the taxpayer of its right to an informal hearing. At the taxpayer’s request, the Commission held a telephonic hearing on January 8, 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 to modify the Notice of Deficiency Determination.

**Background and Audit Findings**

[Redacted] rents and sells [Redacted] at their Idaho location. The [Redacted] are a [Redacted]. These [Redacted] are primarily rented to contractors and do not become affixed to real property. 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 asserted errors in both sales and ordinary purchases.

The only errors relevant to this discussion are related to the imposition of sales tax on the separately stated labor charges associated with the setup and take down of the leased [Redacted]. The Bureau concluded that these charges are part of the sales price subject to sales tax for the lease of the [Redacted].

### **Taxpayer's Protest**

The taxpayer is protesting the imposition of sales tax on the labor charges associated with the setup and take down of the leased property. Setup is the process of [Redacted] at delivery. Take down is the dismantling of the [Redacted] so that the leased property can be transported back to the location that the taxpayer stores its resale inventory. The taxpayer argued that their customers have the option to either pick up the leased property and set it up themselves, hire a third party to set it up, or hire the taxpayer to set up the property for them. The taxpayer's position is that they have two separate transactions: the taxable lease of tangible personal property and nontaxable delivery and installation labor.

### **Analysis**

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies (Idaho Code §§ 63-3612 and 63-3621). Further, to determine the sales price subject to tax, the Commission relies upon the following code section (Idaho Code § 63-3613 quoted in relevant part):

**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.

(b) The term "sales price" does not include any of the following:

4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.

The taxpayer refers to the discussion of the retail sale of tangible personal property, together with services referenced in IDAPA 035.01.02.11.02.06 which states that:

When a mixed transaction involves the transfer of tangible personal property and the performance of a service, both of which are consequential elements whose costs may be separately stated, then two (2) separate transactions exist. The one attributable to the sale of tangible personal property is subject to sales tax while the other is not.

In this case, both the Bureau and the taxpayer agree that the lease of the office trailer is a taxable lease of tangible personal property and that the lease is a consequential part of the contract. Where they differ is whether or not the labor to set up the office trailer at the beginning of a rental contract and the labor to tear down the office trailer at the end of the contract is nontaxable labor.

### **Conclusion**

The Commission has analyzed the specific facts in this situation and determined that both the labor to set up an office trailer at the beginning of a rental contract and the labor to tear down at the end of the contract are separately stated consequential elements and are not subject to tax. These are separate transactions from the lease or sale of the office trailer and were separately stated on the receipt or invoice given to the customer. In making this determination, the Commission found that one of the most important facts was the condition of the office trailer as a substantially completed unit before delivery to the customer's site. The unit itself remains largely unchanged throughout the process of set-up and take-down.

The Commission revised the deficiency prepared by the Bureau to exclude all errors related to sales in which labor for setup of the [Redacted] at the beginning of a rental contract and the labor to take down at the end of the contract was held subject to sales tax. The Commission finds the revised deficiency to be a reasonably accurate representation of the taxpayer's sales and use tax liability for the period of January 1, 2010, through December 31, 2012.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed that addition and found it to be appropriate per Idaho Code § 63-3045. The Commission acknowledges that the taxpayer has paid the liability in full.

THEREFORE, the Notice of Deficiency Determination dated June 27, 2013, is hereby APPROVED as MODIFIED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

Since taxpayer has paid tax deficiency, no ORDER for payment is necessary.

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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