

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 26064
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On July 17, 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 September 1, 2009, through August 31, 2012, in the total amount of \$30,249.

On September 16, 2013, the taxpayer filed a timely appeal and petition for redetermination of the Notice. The Commission wrote to the taxpayer on January 3, 2014, advising the taxpayer of its right to an informal hearing. At the taxpayer’s request, the Commission held an informal hearing on February 10, 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 uphold the Notice of Deficiency Determination.

**Background and Audit Findings**

[Redacted] is a national construction firm that specializes in [Redacted] and [Redacted] construction. 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 ordinary purchases and services agreed to be rendered.

The only errors relevant to this discussion are related to the imposition of use tax on the [Redacted] portion of their [Redacted] purchases. The Bureau determined that because [Redacted] are necessary to bring the product to its final form, these fees were held taxable as services agreed to be rendered as part of a sale.

### **Taxpayer's Protest**

The taxpayer protested the imposition of use tax on the [Redacted] portion of their [Redacted] purchases, contending that these services have nothing to do with the manufacturing of the products sold, but are ancillary services being provided to erect the building as a whole. The taxpayer argues that these services are not incidental to the sale, but are, in fact, separately stated consequential services and, as such, are not taxable.

### **Analysis and Conclusion**

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. Thus, the Commission concludes that the fees for the [Redacted] of the [Redacted] are reasonably included in the sales price. In order to conclude otherwise, those costs would need to be specifically excluded from the statutory definition of sales price.

(b) *The term “sales price” does not include any of the following:*

1. Retailer discounts allowed and taken on sales...
2. Any sums allowed on merchandise accepted in payment of other merchandise...
3. The amount charged for property returned by customers when the amount charged therefor is refunded...
4. The amount charged for labor or services rendered in installing or applying the property sold...
5. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States ...
6. The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales...
7. Delivery and handling charges for transportation of tangible personal property to the consumer...
8. Manufacturers' rebates...
9. The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code...
10. The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service...

(c) The sales price of a “new manufactured home” or a “modular building” as defined in this act shall be limited to and include only fifty-five percent (55%) of the sales price as otherwise defined herein.

(d) Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter...

(e) Tangible personal property when sold at retail for more than eleven cents (\$.11) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen percent (117%) of the price which is paid for such tangible personal property...(Idaho Code §63-3613, emphasis added).

The Commission finds the forgoing statute to be unambiguous. The costs of labor and creativity that are part of the [Redacted] billed with the fabricated [Redacted] are not within the legislated exclusions to the sales price.

The taxpayer's petition emphasizes Idaho Sales Tax Administrative Rule 011, Retail Sales - Sale At Retail (IDAPA 35.01.02.011.02-.03), which speaks to mixed transactions. Mixed transactions involve the transfer of tangible personal property and the performance of a service. Rule 011 gives guidance for determining if a mixed transaction is a retail sale of tangible personal property, a sale of a service, or if there are consequential elements of both property and service.

To determine whether a mixed transaction qualifies as a sale of services, the object of the transaction must be determined; that is, is the buyer seeking the service itself, or the property produced by the service. (IDAPA 35.01.02.011.02).

Here, the Commission finds that the object of the transaction is to acquire the fabricated [Redacted], the property produced by the service. The charges for the [Redacted] of the [Redacted] cannot be severed from the taxable amount charged for the fabricated [Redacted], no more than underlying costs of doing business such as telephone, mortgage financing, and workers' labor would be if they were separately stated by the taxpayer.

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 (IDAPA 35.01.02.011.02).

### **Conclusion**

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 September 1, 2009, through August 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 sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated July 17, 2013, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

The taxpayer has paid tax and interest in full, therefore no demand for payment is made or necessary.

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.  
  
\_\_\_\_\_