

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26144
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On August 27, 2013, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued two Notices of Deficiency Determination (NODDs) to [Redacted] (Taxpayer). The first NODD proposed additional sales tax, penalty, and interest for the period May 1, 2010, through May 31, 2013, in the total amount of \$1,942. The second NODD proposed [Redacted] tax, penalty, and interest for the period May 1, 2010, through April 30, 2013, in the total amount of \$12,948.

On December 11, 2013, the Taxpayer filed a timely appeal and petition for redetermination of the NODD's. At the Taxpayer's request, the Commission held an informal hearing on March 20, 2014. Present at the hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Policy Specialist [Redacted]. During the informal hearing, the Taxpayer did not provide any specific legal or factual reasons as to why the NODD's were incorrect.

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

The Taxpayer is a [Redacted] located in [Redacted], and is permitted to distribute [Redacted] in the state of Idaho. The Bureau conducted a routine audit of the Taxpayer's business to review sales and tobacco products tax law compliance. After its review, the Bureau determined

that there were errors in sales. The errors for each tax type are addressed separately in the following analysis.

Sales Tax

The Bureau completed a detailed examination of the Taxpayer's sales during the audit period and found that the Taxpayer had not collected sales tax on many sales made to Idaho customers for which no exemption applied. These untaxed sales were held taxable.

The Taxpayer protested the Bureau's findings, but did not provide, in the protest or the subsequent hearing, any specific legal or factual reasons as to why the sales tax NODD was incorrect. After the hearing, the Taxpayer raised the argument it does not have nexus (i.e. a physical presence) in the state of Idaho and, therefore, has no responsibility to remit sales tax that it did not collect.

Idaho Code § 63-3622 states that all sales in Idaho are presumed to be subject to sales tax and the burden of justifying a nontaxed sale lies with the retailer.

A retailer doing business in Idaho must apply for an Idaho seller's permit and collect Idaho sales tax on goods shipped or delivered to customers in Idaho. Idaho Code § 63-3620(c) provides that "the person signing the application (for a permit) shall certify that the applicant will actively engage in or conduct a business making sales subject to tax under this chapter."

The Taxpayer applied for a sellers permit in October 2004. The Taxpayer, by signing a permit application, certified that it was a retailer doing business in Idaho and, as such, was required to and did, in fact, collect Idaho sales tax on goods shipped or delivered to customers in Idaho as specified in Idaho Code § 63-3619.

The Taxpayer has filed monthly sales and use tax returns documenting Idaho sales ever since the issuance of that permit. Idaho Code § 63-3623(e) states that "for the purposes of the

sales tax, the return shall show the total sales at retail subject to tax under this act during the reporting period. For the purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use, or consumption of which property became subject to the use tax during the reporting period; in the case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use, or consumption of which became subject to the use tax during the reporting period.”

Idaho Code § 63-3620A(1) provides that “A permit shall be held only by persons actively engaged in making sales subject to tax under this chapter. Any person not so engaged shall forthwith surrender his permit to the state tax commission for cancellation.” In the event that the taxpayer is no longer engaged in making sales subject to tax under this chapter, it will be expected to surrender its permit to the state tax commission for cancellation. In the event that the taxpayer does surrender his permit to the state tax commission for cancellation, this action does not alleviate the taxpayer’s responsibility to collect Idaho sales tax on goods shipped or delivered to customers in Idaho during the time period that it certified that it was a retailer doing business in Idaho.

The Taxpayer did not provide evidence adequate to establish that the amount asserted in the sales tax NODD is incorrect. As a result, the Commission will uphold the NODD related to sales tax. A determination of the Commission is presumed to be correct (Albertson’s, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984) and the burden is on the Taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Taxpayer's sales tax liability for the period May 1, 2010, through May 31, 2013.

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 §§ 63-3045 and 63-3046, and updated interest accordingly. Interest is calculated through March 31, 2015, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

[Redacted]Tax

Idaho imposes a combined forty percent tax on all sales, use, consumption, handling, or distribution of [Redacted] products in the state of Idaho:

Idaho Code § 63-2552.TAX IMPOSED -- RATE. (1) From and after July 1, 1972, there is levied and there shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of thirty-five per cent (35%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state, or (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers. . . .

Idaho Code § 63-2552A.ADDITIONAL TAX IMPOSED -- RATE. (1) In addition to the tax imposed in section 63-2552, Idaho Code, from and after July 1, 1994, there is levied and there shall be collected an additional tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of five percent (5%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

- (a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;
- (b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or
- (c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

Idaho Code § 63-2551(7) defines "wholesale sales price" as "the established price for which a manufacturer or any person sells a tobacco product to a distributor that is not a related

person as defined in section 267 of the Internal Revenue Code, exclusive of any discount or other reduction.”

Idaho Code § 63-2551(3) defines “distributor” as “a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, [or] c) any person engaged in the business of selling tobacco products...to retailers in this state, to be sold by those retailers.”

Both the Bureau and the Taxpayer agree that the Taxpayer is a distributor as defined in Idaho Code § 63-2551(3). They also agree that the Taxpayer’s sale of [Redacted]products to Idaho distributors, retailers, or the end users, is subject to the forty percent tax on the wholesale sales price of the [Redacted] product. Where the Bureau and the Taxpayer are not in agreement is the determination of the wholesale sales price of that [Redacted] product.

The Taxpayer purchases [Redacted] exclusively from a company called [Redacted] which has been identified by the Bureau as a related entity to the Taxpayer. As a result, the Bureau held that the wholesale sales price subject to the [Redacted] product tax is the amount for which the [Redacted] product is sold to an unrelated Idaho distributor, retailer or end user, rather than the amount listed on the invoice between the related manufacturer and Taxpayer.

The Taxpayer disagrees with the Bureau’s findings and argues that it is correct in determining the wholesale sales price to be the amount for which [Redacted] sells the [Redacted] product to the Taxpayer, rather than the amount that the Taxpayer sells it to the Idaho distributor, retailer, or end user. The Taxpayer maintains that the price it pays for the [Redacted] product purchased from [Redacted] is a fair price, covers all costs, and includes a profit for the manufacturer. Idaho Statute does not stipulate that if the price between the related entities

seems to be fair, then it is acceptable. The statute states that the wholesale sales price is the amount for which the [Redacted] product is sold to an unrelated Idaho distributor.

The Taxpayer has stated on more than one occasion that it chooses not to challenge the related party determination made by the Bureau; however, the Taxpayer indicated that it may reconsider that argument at a future date. The Taxpayer concedes that, in spite of its disagreement with the Bureau's findings, it is now remitting [Redacted] products tax on the amount for which it sells the [Redacted] product to the Idaho distributor, retailer, or end user in order to operate in line with Idaho code.

The Taxpayer chose not to provide a legal argument to dispute the Bureau's determination that the Taxpayer and [Redacted] were related parties. As a result, the Commission will uphold the NODD related to [Redacted] product tax. A determination of the Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984) and the burden is on the Taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Taxpayer's [Redacted] product tax liability for the period May 1, 2010, through April 30, 2013.

The Bureau added interest and penalty to the [Redacted] product tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through March 31, 2015, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notices of Deficiency Determination dated August 27, 2013, are hereby APPROVED, in accordance with the provisions of this decision, and are AFFIRMED and MADE FINAL.

IT IS ORDERED that the Taxpayer pay the following tax, penalty, and interest:

<u>TYPE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Sales Tax	\$ 1,473	\$ 372	\$ 176	\$ 2,021
[Redacted] Product Tax	<u>11,119</u>	<u>1,114</u>	<u>1,315</u>	<u>13,548</u>
Total	<u>\$12,592</u>	<u>\$1,486</u>	<u>\$1,491</u>	<u>\$15,569</u>

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.
