

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26172
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On November 8, 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 February 1, 2010, through January 31, 2013, in the total amount of \$11,731.

On January 8, 2014, the taxpayer filed a timely appeal and petition for redetermination of the Notice. On March 4, 2014, the Commission wrote, advising the taxpayer of its right to an informal hearing, to which no response was received. A second letter was sent on April 15, 2014. The Commission called the taxpayer’s representative on May 13, 2014, at which time an informal hearing was scheduled for June 24, 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 upholding the audit findings.

Background and Audit Findings

The taxpayer is a [Redacted] based out of [Redacted], Texas, that sells [Redacted] through affiliates, distributors, dealers, and independent business owners, which will be referred to as “agents” throughout this decision.

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 identified errors with respect to sales.

Taxpayer's Protest

The taxpayer is in agreement with the audit findings, with the exception of the imposition of Idaho sales tax on freight-in. Freight-in refers to freight charges incurred by a seller for its receipt of goods it holds for resale to the final customer. Freight-in does not include charges for delivery to the final customer.

The taxpayer's protest letter states that:

The structure of the company allows affiliates, distributors, dealers and independent business owners to also be consumers of the products. Therefore a distributor or independent business owner may be a customer as well. Also a distributor or independent business owner has to purchase product in order to be considered active for commission purposes. In other words, they are allowed to "be their own customer." With the company being engaged in "[Redacted]," legally the two can coincide.

Relevant Tax Code & Analysis

IDAPA 35.01.02.021.01 defines a [Redacted] as "an organization that can convey to a person the right to sell a product and the right to convey those rights to another person." In this case, the taxpayer has conveyed the right to sell its product to its agents. The agents order product directly from the taxpayer, who ships the product to the agent with the understanding that the agent will either sell that product independently or use the product themselves. Rather than requiring each of its agents to obtain permits and collect sales tax, the taxpayer chose to assume responsibility for all Idaho sales taxes on the products sold at retail by its agents in Idaho. This assumption of responsibility was confirmed in writing on March 31, 2010, when the taxpayer signed the [Redacted] sales tax agreement with the Commission.

The sales tax agreement also specifies that, “Freight charges for shipping goods from [Redacted] to its affiliates, distributors, dealers, or independent contractors are taxable even if the charges are separately stated. Freight charges for delivery directly to the customers are not taxable if the charges are separately stated.”

This inclusion in the agreement is consistent with Idaho statute. Idaho Code § 63-3613(a)(3) includes in the sales price subject to sales tax, the cost of transportation of the property prior to its sale. The taxpayer is required to collect sales tax from the agent on the retail sales price of the product, which would include the cost of transportation of the product prior to its sale. The agent then sells the product to the end user, reimbursing himself for the sales tax paid at retail.

Idaho Code § 63-3613(b)(7) excludes from the sales price subject to sales tax, delivery and handling charges for transportation of tangible personal property to the consumer. If the taxpayer is shipping product to the end user, the sales price subject to sales tax would not include separately stated freight charges.

The taxpayer has argued that its agents can be both the reseller of its products and alternately the end user of its products. The taxpayer could not, however, identify which sales were made to its agents for resale versus which sales were made to its agents for their own use. The Commission finds that with no way to identify which sales were made to its agents for resale versus which sales were made to its agents for their own use, it is reasonable to expect that the taxpayer treat all sales made to its agents as resale purchases and include in the sales price subject to sales tax, the cost of transportation of the property prior to its sale. In the event that the taxpayer chooses to find a way to identify sales made to its agents for personal use, the

separately stated delivery and handling charges for transportation could be excluded from the sales price subject to sales tax.

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 and use tax liability for the period February 1, 2010, through January 31, 2013.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed this addition and found it to be appropriate per Idaho Code § 63-3045, and has updated interest accordingly. Interest is calculated through January 31, 2015, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated November 8, 2013, is hereby APPROVED, 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>INTEREST</u>	<u>TOTAL</u>
\$10,527	\$1,657	\$12,184

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.
