

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

In the Matter of the Protest of )  
 )  
 REDACTED ) DOCKET NO. 0-097-284-096  
 )  
 ) Petitioner. )  
 )  
 ) DECISION  
 )  
 \_\_\_\_\_ )

On April 17, 2015, 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 (Petitioner) proposing use tax, penalty, and interest for the period January 1, 2010, through December 31, 2012, in the total amount of \$5,214.

On June 19, 2015, the Petitioner filed a timely appeal and petition for redetermination of the Notice requesting that the Commission rule on the matter based upon the protest letter and the information in the file.

On November 19, 2015, additional documentation was provided and as a result, the Bureau made an adjustment to the original Notice.

The Commission, having reviewed the audit file and considered the information provided in the months following, hereby upholds the adjusted audit findings for the reasons detailed below.

**Background and Audit Findings**

The Petitioner, a subsidiary of Redacted is a for hire motor carrier that transports goods for other parties, as opposed to transporting its own goods exclusively.

The Bureau conducted a routine comprehensive audit of the Petitioner’s business for the purpose of determining compliance with Idaho sales and use tax law.

After its review, the Bureau asserted errors in both the examination of ordinary purchases and the examination of larger purchases over \$2,000.

At issue in this case is the Bureau's imposition of use tax on repair parts that were affixed to truck trailers that are part of the Petitioner's interstate fleet registered under the Redacted. The repaired trailers in question were also registered with the Idaho Department of Transportation and have Idaho license plates affixed to them.

The Petitioner agrees with the Bureau's imposition of sales and use tax in all other respects.

### **Petitioner's Protest**

According to the protest letter, the Petitioner agrees with the Bureau that the exemption afforded to them by Idaho Code § 63-3622R(c) for the purchase of interstate trailers does not apply to trailer repair parts. The Petitioner makes no claim that it paid Idaho tax on the repair parts in question. Rather, it claims that tax is not due.

The Petitioner believes that the imposition of use tax must be based on a clear and identifiable use or consumption of tangible personal property in the state of Idaho. The Petitioner refers to the Commissions publication #41 Transportation An Educational Guide to Sales Tax in the State of Idaho to support its stance that the point-of-sale determines which state receives the tax. In this guide on page two it states that "A common carrier that buys goods in Idaho and takes delivery of them in the state without a bill of lading must pay tax to Idaho like any other consumer from out-of-state. The point-of-sale, not the destination, determines which state receives the tax." The Petitioner even goes as far to state that it believes that these repair parts would not be subject to use tax even if they were installed Redacted one day and then

brought to the state of Idaho on the next day, though the Petitioner goes on to say that they did not.

The Petitioner maintains that the interstate trailers that were repaired were part of Redacted and that the probability that these trailers ever entered Idaho during the audit period is very unlikely. The Petitioner maintained that the trailer, in spite of the Idaho plate, may never enter the state of Idaho after the initial purchase and registration of that trailer. To support this, the Petitioner provided a 2012 analysis of the total miles driven by the entire fleet of its trucks.

### **Relevant Tax Code**

Idaho imposes a tax on the sale of tangible personal property, unless an exemption applies.

Idaho Code § 63-3619. Imposition and rate of the sales tax. – An excise tax is hereby imposed upon each sale at retail at the rate of six percent (6%) of the sales price of all retail sales subject to taxation under this chapter

When the state legislature enacted the sales tax in 1965, it recognized that not all sales could be reached by the sales tax alone. Consequently, the legislature enacted a complementary use tax at the same time. The current version of that statute is quoted below in pertinent part:

Idaho Code §63-3621. Imposition and Rate of the Use Tax – Exemptions. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property . . .

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. . . .

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state . . .

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

When the use tax was enacted, the House Revenue and Taxation Committee also provided the following additional explanation regarding Idaho Code § 63-3615(b):

*The term "use" is here defined as broadly as possible and includes anything arising out of the legal status of ownership and the incidence of ownership other than sale of property in the regular course of business. By this definition, the use tax in its operation applies to any dealing with property on the part of the person holding or consuming it. It is this breadth of definition that makes the use tax concomitant of the sales tax covering those areas involving transactions in tangible personal property which are not reached by the sales tax. House Revenue and Taxation Committee Report in Support of House Bill 222, May 14, 1965, p. 18, 38th Id. Leg. Sess. (emphasis added).*

### **Analysis**

The Petitioner has argued that the point-of-sale, not the destination, determines which state receives the tax, a sentence directly from publication #41. The quote provided by the petitioner is a portion of a discussion in the publication about when a common carrier can purchase goods in the state of Idaho for use outside of the state of Idaho without paying sales tax and use its own trucks to transport the goods to that out-of-state location rather than hiring a third party to transport the goods for them. The enabling statute for this exemption is Idaho Code § 63-3622P, purchases shipped out-of-state by a common carrier:

There is exempted from the taxes imposed by this chapter the sale or purchase of tangible personal property shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state if the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier. (Idaho Code § 63-3622P)

The Petitioner's statement that these trailers rarely, if ever, enter Idaho during the audit period is not a persuasive argument because Idaho Code § 63-3621(h) places the burden of proof on the Petitioner. The Petitioner provided an analysis of the total miles driven by the entire fleet

of its trucks, but was unable to match those miles to the specific trailers those trucks were pulling. The Petitioner's entire fleet is comprised of multiple smaller fleets based in states across the country. Though the figure was not provided, the Commission reasonably assumes that the percentage of total Idaho miles for the fleets based in the northwest region would yield a higher percentage.

In addition, the Bureau only held the use of trailers that the Petitioner registered in the state of Idaho. Each of these trailers carries an Idaho license plate and does have at least one of its fleets based in the state of Idaho. The Commission finds the Bureau's stance that at least some of these trailers have traveled in Idaho and will continue to return to the state of Idaho reasonable. Since the Petitioner cannot identify which trailers have traveled where, the Commission agrees with the Bureau's finding that holds the Petitioner's purchase of repair parts that were affixed to truck trailers that are part of the Petitioner's Redacted subject to a use tax.

The Petitioner did not provide evidence adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the Notice. A determination of the State Tax 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 Petitioner 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 Petitioner's sales and use tax liability for the period January 1, 2010, through December 31, 2012.

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 has updated interest accordingly. Interest is calculated through March 31, 2016, 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 April 17, 2015, as adjusted by the Bureau, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

TAX	PENALTY	INTEREST	TOTAL
\$4,244	\$212	\$772	\$5,228

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the Petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2015, 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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