

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 25442 |
| [Redacted], |) | |
| |) | |
| Petitioner. |) | DECISION |
| _____ |) | |

On September 20, 2012, 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 sales tax, use tax, penalty, and interest for the period April 1, 2008 through March 31, 2011, in the total amount of \$331,465.

On November 23, 2012, the Petitioner filed a timely appeal and petition for redetermination of the Notice.

At the Petitioner’s request, the Commission held an informal hearing on November 3, 2014. Present at the informal hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Policy Specialist [Redacted].

After the informal hearing, additional documentation was provided for review. The Bureau reviewed the documentation and modified the audit findings, resulting in a decrease in the proposed liability.

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

Background and Audit Findings

The Petitioner provides [Redacted] services in addition to [Redacted] services like [Redacted], etc.

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 sales, ordinary purchases, and fixed asset additions.

The Petitioner raised multiple issues in the protest, each of which was addressed, at least in part, with adjustments made by the Bureau. The remaining issues under protest are addressed separately in the following analysis.

Protest Analysis

Services Rendered

In the examination of taxed sales, the Bureau found that the Petitioner was not collecting sales tax on two services associated with buying and installing [Redacted]. The first service, a [Redacted] fee, is a fee the Petitioner charges its customer to take old [Redacted] when that customer buys new ones and has them installed. The second service, a [Redacted] fee, is the process of [Redacted]. When either of these service fees is charged in conjunction with the sale of [Redacted], the Bureau held that the Petitioner should collect sales tax on that amount.

The Petitioner protested the imposition of sales tax on [Redacted] fees, stating that this is a service and not subject to sales tax. The Petitioner argued that [Redacted] is not an integral part of the sale of a [Redacted] but did concede that it is specifically referenced in rule as a taxable transaction. Though in disagreement on this issue, the Petitioner assured the Commission that it will collect sales tax on these fees going forward.

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 definition of sales price includes “services agreed to be rendered as part of the sale”, which specifically includes 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 tangible personal property.

The Commission promulgated and the Idaho Legislature approved IDAPA 35.01.02.43.02, which also supports the statute:

02. Services Agreed to Be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term “sales price” is defined by Section 63-3613, Idaho Code, to include “services to be rendered as a part of the sale.” The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. . .

IDAPA 35.01.02.65 states that “services agreed to be performed in conjunction with the sale of a [Redacted]” are taxable. Examples given there are [Redacted] and “similar charges”. The Rule also states that amounts charged for [Redacted] or [Redacted] being purchased are **not**

taxable. Presumably this is because [Redacted] is also considered installation, which is not subject to tax when separately stated.

The Commission agrees with the Petitioner that the fee for [Redacted] and the fee for [Redacted] are both services; however, when these services are being charged in conjunction with the sale of tangible personal property, these are services rendered as part of the sale and therefore subject to sales tax. The Commission reviewed the projection of the errors related to [Redacted] and [Redacted] and found it to be reasonable.

The Petitioner also argued that the issue of services rendered as part of the sale had been addressed in a previous petition for redetermination, stemming from a prior audit of the Petitioner's business, and that it believes that those who attended that informal hearing agreed that these were not subject to sales tax.

Without stating it explicitly, the Petitioner has raised the issue of equitable estoppel. Estoppel occurs when a party reasonably relies on the promise of another party and the reliance is injured or damaged in some way. In this case, the Petitioner asserts that it did not collect sales tax on the fee for [Redacted] and the fee for [Redacted] because it relied on what was said at that informal hearing.

The Commission is not in the practice of recording informal hearings. The exact points brought up by the Petitioner during the previous informal hearing are unknown, as is the exact response to these points by those who attended that hearing. It is unlikely that a Commissioner or a Commission employee knowingly gave an incorrect answer on this issue. Moreover, there is precedent in Idaho to support the argument that the Commission cannot be estopped from asserting a sales tax deficiency in this case. The Idaho Supreme Court has ruled that:

In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel. (Citations omitted.)

The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax. (Citations omitted.) State of Idaho v. Adams, 90 Idaho 195, 409 P.2d 415 (1965).

The Commission also reviewed the previous petition for redetermination and found that a decision had not been issued in that case, but rather a settlement of the tax, penalty, and interest in compliance with Idaho Code § 63-3047 and Idaho Code § 63-3048 had been issued. The specific language of this agreement states that it “shall not be interpreted by either party or by any administrative agency or court as a concession or waiver by either party of any claim or defense which may be asserted by either party in any future disputes regarding the sales and use tax liability of the Petitioner for any period not expressly included within this agreement.” The Commission, therefore, denies the Petitioner’s estoppel argument.

Nontaxed Sales – General

In the examination of nontaxed sales, the Bureau found that the Petitioner had accepted exemption claim forms from customers claiming exemption from sales tax. The Bureau does not question whether the Petitioner obtained exemption documentation for these nontaxed sales, but rather asserts these sales are specifically excluded from exemption by law and that the retailer should not have accepted the certificates.

The Petitioner maintains that it should be able to rely on a completed exemption certificate and that it is the business claiming the exemption that has the responsibility to understand its own situation and how sales tax applies to its business.

The specific non-taxed sales issues will be detailed in subsections below. The following is provided to present the basis in law for these issues.

The Idaho Sales Tax Act states that all sales are presumed taxable unless an exemption applies. Idaho Code § 63-3622 provides retailers with specific methods to document exempt sales:

63-3622. Exemptions -- Exemption and resale certificates -- Penalties. (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

When considering the interpretation of Idaho Code § 63-3622, the Commission must consider the language of the statute by giving effect to every section and construing each section so that it is harmonized with the other sections of the statute. When considering these factors, it is clear that the legislature intended a low threshold for the acceptance of certificates by sellers. Unless the transaction is taxable as a matter of law, the seller has no duty or obligation for the collection of tax. This means that unless the facts show that the seller knows that the buyer's purchase is taxable, or if the representations on the invoice and certificate disclose that the claim of exemption is invalid as a matter of law, the certificate will relieve the seller from any potential liability. The seller can rely on the representations of the buyer, even if the representations are not reasonable, and the seller has no duty to question or challenge the representations. The seller can only be held liable if the seller's actual knowledge is such that he knows the buyer cannot claim the exemption at the time of sale or if the purchase is taxable as a matter of law.

The Bureau identified three such exclusions in its examination for the nontaxed sales that it held “taxable as a matter of law”, regardless of any customer’s claim to the exemption.

Nontaxed Sales – Production Exemption

The first exclusion the Bureau identified in its examination of nontaxed sales was for the sale of repair parts to customers who claimed exemption from sales tax under Idaho Code § 63-3622D, known as the “production exemption.” The statute establishing the production exemption has sections that specifically exclude the purchase and use of certain tangible personal property, regardless of how the property is used. When one of these exclusions applies to a sale of property, the sale never qualifies for the production exemption, and, therefore, it is “taxable as a matter of law”, regardless of any customer’s claim to the exemption.

The repair parts, in this case, were installed on [Redacted], in which case the production exemption claim cannot apply to any sale of these repair parts. As a result, the Bureau asserts that sales of these products are “taxable as a matter of law.” The Bureau used sales invoices, some of which listed either a [Redacted] or a [Redacted] indicating a [Redacted] which would have to be [Redacted], to isolate the transactions where the repair parts were installed on [Redacted].

The Petitioner maintains that it should be able to rely on a completed exemption certificate and claimed that, in some cases, the Bureau made assumptions that the repair parts were on a [Redacted] or [Redacted]. The Petitioner was asked to provide copies of both the exemption certificates and the invoices it was referencing, for the Commission to review. None were provided to support this claim.

Idaho Code § 63-3622D(g)(7) specifically excludes [Redacted] from the production exemption. Idaho Code § 63-3606B defines the term [Redacted] as a “[Redacted].”

IDAPA 35.01.02.079.05 states that the production exemption does not include “[Redacted] required to be licensed by Idaho law.” Any repair parts for [Redacted] required to be licensed by Idaho law would similarly be excluded.

The Commission agrees with the Bureau’s determination that repair parts installed on a [Redacted] as defined above, do not qualify for the production exemption; therefore, the Commission upholds the Bureau’s findings.

Nontaxed Sales – Washington Exemption

The second exclusion identified by the Bureau is where the Petitioner allowed its customers to claim an exemption available in the state of Washington. Washington has an exemption for the sale of repair parts installed on interstate trucks where the truck is used to haul passengers or freight for hire. Idaho does not have such an exemption. The Bureau held that these Idaho sales were subject to Idaho law and disallowed any out of state exemption claims.

IDAPA 35.01.02.069 discusses interstate commerce and even uses an example that speaks to this specific case.

069. INTERSTATE COMMERCE (RULE 069).

When tangible personal property is located within the state of Idaho at the time of sale and is delivered within the state of Idaho, such sale is taxable irrespective of where the parties to the contract of sale are located and where the contract was made or accepted or the funds paid. Example: A Washington-based interstate trucking firm hires an Idaho repair facility to install parts on a disabled truck. The trucking firm takes delivery of the repaired vehicle in Idaho. The sale of the parts is subject to Idaho sales tax.

The Commission agrees with the Bureau's determination that repair parts installed on interstate trucks in the state of Idaho are subject to Idaho sales tax and finds that the Petitioner should have collected sales tax on the transactions.

Nontaxed Sales – Resale Exemption

The third exclusion identified by the Bureau is where the Petitioner made sales to customers who claimed to be repairing motor vehicles or trailers that were intended for resale. The Bureau found that for some transactions it was documented on the sales invoice that the motor vehicle repaired had a license plate number, which would indicate that it was registered for use in the state of Idaho. The Bureau also found that for some transactions it was documented on the resale exemption certificate that the business did not appear to be in the business of selling the particular motor vehicle or trailer that was repaired. The Bureau determined that the Petitioner, having this information at the time of sale, should have known that the purchaser could not claim the resale exemption, therefore held that these transactions were taxable as a matter of law.

Idaho Code § 63-3622(c) states that “A resale certificate relieves the seller from the burden of proof **only** if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section.” IDAPA 35.01.02 specifies that “if the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can

accept the certificate and is relieved of any further responsibility.” According to the Bureau, none was provided for these particular errors.

The Commission requested that the Petitioner provide a copy of the completed resale certificates and the invoices related to these specific transactions in order to make a redetermination for this issue, however, none were provided. The Petitioner did not provide evidence adequate to establish that these transactions were not taxable as a matter of law; therefore, the Commission upholds the Bureau's findings.

Credit for Internal Corrections

The Petitioner expressed concern that the Bureau had not taken into account its internal audit process when reviewing the non-taxed sales and asserted that the examination may contain errors that had been corrected in an adjustment by the Petitioner.

The Petitioner was given time to provide documentation supporting that adjustments had already been made for transactions held by the Bureau, but did not provide evidence adequate to establish that these transactions had been adjusted; therefore, the Commission upholds the Bureau's findings.

Other Sales

The Bureau examined the income tax returns and general ledger asset accounts to review the Petitioner's sales of tangible personal property that were not normally sold in the regular course of business. In this case, the transactions were limited to sales of [Redacted] and [Redacted]. For nontaxed sales of [Redacted], the Bureau checked the [Redacted] records and did not hold sales taxable that showed tax paid by the purchaser at the time of [Redacted] and [Redacted]. For the remaining transactions, the Petitioner did not provide the appropriate

exemption certificates or show evidence that these sales were exempt; therefore these sales were held subject to sales tax.

The Petitioner protested the imposition of sales tax on the [Redacted] sales, arguing that the [Redacted] were sold to individuals who would pay sales tax at the time that [Redacted] was [Redacted] and [Redacted]. The Petitioner speculated that if sales tax did not appear to be paid in the [Redacted] records, the customer must not have [Redacted] and [Redacted] the [Redacted] in Idaho or the customer was using them for an exempt purpose.

The Commission agrees with the Bureau that as a permitted retailer, the Petitioner has a requirement to collect sales tax on any sale that it makes, even if the tangible personal property is not sold in the regular course of business. The tax code places an obligation on the seller to collect the tax, and while the legal incidence of the tax is intended to fall upon the buyer, this is not a substitute for the seller's responsibility (Idaho Code § 63-3619(b) and IDAPA 35.01.02.068.07).

The Petitioner offered additional arguments for several of the remaining [Redacted] and was given time to provide documentation supporting their arguments that those transactions were not subject to sales tax. These arguments included reference to insurance claims for [Redacted] that had been [Redacted] and one [Redacted] that had been sold in another state. The Petitioner did not provide evidence adequate to establish that there was no actual sale of the [Redacted] or documentation to support that a [Redacted] was sold out of state; therefore, the Commission upholds the Bureau's findings.

Asset Purchases

The Bureau examined the income tax returns and general ledger asset accounts to review the Petitioner's purchases of tangible personal property not consumed or sold in the regular

course of business. In this case, the transactions were limited to [Redacted] and [Redacted]. The Petitioner did not provide invoices showing sales tax had been paid or provide references to exemptions that may have applied to these purchases; therefore, the Bureau held these purchases subject to use tax.

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax is not paid to the vendor, the buyer owes a use tax to the state. The sales and use tax rates are identical, and all states with a sales tax have a complementary or compensating use tax requirement. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621).

The Petitioner protested the imposition of use tax on the fixed asset purchases and raised several arguments as to why these transactions were not subject to use tax. The Petitioner provided additional documentation after the hearing. The Commission reviewed the documentation and, in some cases, the work papers were adjusted. The remaining items are discussed below.

Asset Purchases – Exchange

The Petitioner identified two line items that were held subject to use tax that were an exchange with another business. The Bureau held that the tangible personal property that the Petitioner received in the exchange was subject to a use tax, since no sales tax was collected by the other party in the exchange. The Petitioner is in agreement with the Bureau, but believes that the amount subject to use tax should be reduced, since it collected sales tax on the property that it received in the exchange.

Idaho Code § 63-3612 states that the exchange or barter of tangible personal property for a consideration is a sale. The Commission agrees with the Bureau that the total value of the

tangible personal property that was received is the total amount subject to use tax. The fact that the other side of the exchange was properly taxed does not reduce the value of the tangible personal property received. The Commission upholds the Bureau's findings.

Asset Purchases – Centralized Purchase

The Bureau identified the purchase of several assets, including [Redacted] and [Redacted], on which no sales tax had been collected and held these subject to use tax. The Petitioner protested the imposition of sales tax on these purchases, stating that these were acquired with the intent to place them into service in its out-of-state operations. The assets in question were purchased and delivered in the state of Idaho, but were intended for use in other states.

As stated earlier, in Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax cannot or is not paid to the vendor, the buyer owes a use tax to the state. The Idaho legislature grants sales and use tax exemptions for specific goods, specific uses of goods, and specific entities and entity classes. Unless an exemption is clearly granted to a specific organization or to specific sales or purchases by a specific organization or a class of organization, **no** exemption applies.

In this case, the Petitioner has not identified an exemption in the Idaho Sales Tax Act for tangible personal property purchased in the state of Idaho by an Idaho business with the intent to use it in another state. The Commission upholds the Bureau's findings.

Asset Purchases – [Redacted] Buyout

The Bureau identified the purchase of several assets from [Redacted] on which no sales tax had been collected and held these subject to use tax. The Petitioner protested the imposition

of sales tax on these purchases, stating that these were payments made to release a lien on loaned [Redacted].

The Petitioner provided a copy of the original [Redacted] agreement that it claims was associated with this 2010 [Redacted] buyout. According to this 1998 agreement, the Petitioner contracted with [Redacted] to become a [Redacted]. At the time that the contract was signed, the Petitioner agreed to use [Redacted] products exclusively at each of its locations, in exchange for the use of equipment owned by [Redacted]. In the event that the Petitioner chose to discontinue being a [Redacted], [Redacted] had the option to remove the equipment or charge the [Redacted] costs to the dealer. The Petitioner had the use of this [Redacted] for approximately 12 years before choosing to discontinue the relationship.

The Commission finds that the conditional agreement between the Petitioner and the vendor, and the subsequent buyout, was a sale. The Petitioner, regardless of the value of the [Redacted] at the time of buyout, paid an amount which gave them sole ownership of the [Redacted]. IDAPA 35.01.02.24.12 discusses a lease with an option to purchase. The rule specifies that “if the lessee exercises the option to buy, the lessor/owner must collect sales tax from the lessee/buyer on the full remaining purchase price, the residual, when the option is exercised.” If sales tax is not paid to the vendor, the buyer owes a use tax to the state. The Commission upholds the Bureau’s findings.

Asset Purchases – Additional Arguments

The Petitioner did offer additional arguments for several of the remaining purchases and was offered the opportunity to provide documentation supporting that these transactions were not subject to sales tax. These arguments included reference to accumulated expenditures, location of repair, and sales tax showing on expense reports. The Petitioner did not provide evidence

adequate to establish that these purchases were not subject to sales tax or that sales tax was paid at the time of purchase; therefore, the Commission upholds the Bureau's findings.

Ordinary Purchases

Ordinary Purchases – Supplies

The Bureau examined the Petitioner's general ledger account, 5090 - Tools and Supplies, in the examination of expenses and found that there were purchases for which the Petitioner did not provide invoices showing sales tax had been paid or provide reference to an exemption that applied to each purchase. The Bureau held these purchases subject to use tax.

The Petitioner protested the imposition of use tax on supply purchases, stating that it computes and pays tax in several different ways. The Bureau found that the Petitioner was estimating that 5 percent of the purchases in this account were taxable supplies and was accruing use tax on this amount on a monthly basis. The Bureau offset the purchases subject to use tax with a credit for the 5 percent accruals.

The Petitioner argued that the account included items that were coded to shop supplies, but were actually used in the sale of new [Redacted]. The Petitioner provided documentation that 87 percent of the new [Redacted] supplies ([Redacted], etc.) coded to the supply account fell into this category. The Bureau offset the purchases subject to use tax by apportioning the new [Redacted] supplies accordingly.

The Petitioner stated that shop supplies was a line item on customer invoices and that it collected and remitted sales tax from its customers and argues that this amount should offset the purchases subject to use tax. The Bureau advised the Petitioner that it should not charge sales tax on separately stated shop supplies that are used during a repair, even though the customer is

being invoiced for the separately stated supplies, and denied an offset to the purchases subject to use tax.

IDAPA 35.01.02.62.05 identifies supplies as items that are consumed during the repair that have no identifiable value billed to the customer and which do not become part of the item being repaired. It goes on to state that “supplies are subject to tax when purchased by the dealer/repair shop and should not be included as part of the taxable amount billed to the customer.” The Commission agrees with the Bureau, and upholds the Bureau’s findings.

Ordinary Purchases – Additional Arguments

The Petitioner offered additional arguments for several of the items held by the Bureau in the examination of expenses. These arguments included reference to internal transfers/tracking not sourced back to acquisition or purchase documents, expense report items, and specific invoices it believed to be exempt. The Petitioner was given time to provide documentation supporting that these transactions were not subject to use tax. The Petitioner did not provide evidence adequate to establish that any of these purchases were not subject to sales tax; therefore, the Commission upholds the Bureau’s findings.

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 April 1, 2008 through March 31, 2011.

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 August 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 September 20, 2012, 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:

| <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|------------|----------------|-----------------|--------------|
| \$275,848 | \$13,792 | \$64,556 | \$354,196 |

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 enclosed.

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.
