

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25472
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On November 14, 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 March 1, 2009, through June 30, 2010, in the total amount of \$2,444.

On November 20, 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 January 13, 2015. Present at the informal hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Policy Specialist [Redacted].

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

**Background and Audit Findings**

The Petitioner purchased a [Redacted], and [Redacted] from a vendor. At the time of purchase, the Petitioner completed an exemption certificate, Form ST-101, claiming that the [Redacted] was to be used by a business devoted to [Redacted]. Such use is exempt from sales tax in Idaho under the production exemption (Idaho Code § 63-3622D).

The Bureau reviewed the exemption claimed, along with the Petitioner’s Idaho Individual Income Tax returns for 2007 through 2011, and found that the Petitioner had not filed a Schedule

F (Profit or Loss From Farming), which is generally submitted when someone is operating a farm as a business. The Petitioner's schedule 4835 (Farm Rental Income and Expense) showed that the Petitioner claimed gross farm rental income of \$1,042 and depreciated the equipment as farm rental property. The Bureau determined that purchase of equipment used in maintaining rental property does not qualify for the production exemption and held the equipment subject to use tax.

### **The Petitioner's Protest**

The Petitioner protested the imposition of use tax on the purchase of the equipment, stating that it is an important part of his operation, which includes farming, [Redacted], and [Redacted]. The Petitioner maintains that although he does rent the property to a neighbor who brings his cows and horses to graze, he is primarily producing [Redacted] for resale. He states that he has approximately [Redacted] that are over [Redacted] and many other smaller [Redacted] that he has [Redacted] over the years.

The Petitioner maintains his property himself using the equipment purchased. The [Redacted] is used to get the [Redacted] ready for [Redacted] and the [Redacted] is used to remove [Redacted]. The [Redacted], and [Redacted] are used to [Redacted] to maintain the [Redacted] and [Redacted] on the property. The [Redacted] are used for irrigation and as a [Redacted] for the [Redacted] he built. The [Redacted] is also used to [Redacted] from the [Redacted] to reduce the amount of fire damage that may happen.

The Commission does not question that the equipment purchased is critical to the maintenance of the Petitioner's property. The Commission does, however, question whether the Petitioner's activity constitutes a farming operation.

As noted, there is a tax exemption available on certain purchases related to farming operations. Farming is defined in the Idaho Code as follows:

**FARMING.** -- The terms “farm” and “farming” refer to and mean the business of operating for gain or profit a ranch or farm and include stock, dairy, poultry, fish, fur, fruit and truck farms, ranches, ranges and orchards, and custom farming (Idaho Code § 63-3603.)

The available exemption is elaborated upon in the following relevant excerpt of the Idaho Code.

**PRODUCTION EXEMPTION.** -- There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

.....  
(2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.....

(d) As used in this section, the term “directly used or consumed in or during” a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage (Idaho Code § 63-3622D.)

The Petitioner has not provided evidence that he operated a farm for gain or profit. The occasional removal of a [Redacted] on his land is not sufficient evidence on its own that the Petitioner operates an ongoing [Redacted] business. When given the opportunity to classify the nature of his business in filing his personal income tax returns, the Petitioner did not report farm income, but instead reported rental income. While there is no question that the equipment is necessary for the Petitioner to maintain his property, the Commission does not believe that the Petitioner’s activity constitutes a farming operation.

The Bureau added interest to the Petitioner’s Idaho tax deficiency. The Commission reviewed this addition and found it appropriate per Idaho Code § 63-3045.

The Bureau also added a penalty found in Idaho Code § 63-3624(i), which asserts a “penalty equal to five percent (5%) of the sales price of the property” in the event that it is determined that “the purchaser has repeatedly or intentionally made purchases claimed to be exempt that are not exempt, and the purchaser has failed to voluntarily report and pay use tax in regard to those purchases.” In this case, the Commission finds that there is insufficient evidence that the Petitioner has *repeatedly* or *intentionally* made these types of purchases or that the Petitioner had a sufficient understanding that he did not qualify for the exemption claimed. Therefore, the Commission reduced the penalty to the negligence penalty found in Idaho Code § 63-3046, which is consistent with this conclusion.

Interest is accrued through September 30, 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 14, 2012, is hereby MODIFIED, 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>
\$1,254	\$63	\$269	\$1,586

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

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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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