

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 25740  
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 )  
Petitioner. ) DECISION  
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\_\_\_\_\_ )

On June 18, 2010, 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 May 1, 2007, through May 31, 2010, in the total amount of \$91,243.

On August 20, 2010, the Petitioner filed a timely appeal and petition for redetermination of the Notice. At that time, additional documentation was provided for review. The Bureau reviewed the documentation and modified the audit findings, which resulted in a decrease in the proposed liability.

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].

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 revised audit findings.

**Background and Audit Findings**

The Petitioner owns and operates a [Redacted] in [Redacted], Idaho. The Bureau conducted a routine comprehensive audit of the Petitioner’s business for the purpose of determining

sales and use tax law compliance. After its review, the Bureau asserted errors in sales, fixed asset additions, ordinary purchases, and [Redacted] given to employees and guests.

The only errors still under protest and relevant to this discussion are related to the imposition of sales tax on the separately stated service charges for the mandatory gratuities. The Bureau discovered that the Petitioner was not charging sales tax on the service charge portion of each transaction. The Bureau held these charges subject to sales tax based on the following rule:

**05. Service Charges.** Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, must be included in the purchase price subject to tax... (IDAPA 35.01.02.43.05)

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

The Petitioner protested the imposition of sales tax on the service charges for the mandatory gratuities, arguing that these charges were never meant to be subject to sales tax. The Petitioner's argument hinges on a bill that was introduced and passed during the 2011 legislative session. House Bill 213 added the following language to Idaho Code § 63-3613:

(f) Sales price shall not include a gratuity or tip received when paid to the service provider of a meal. The gratuity or tip can be either voluntary or mandatory, but must be given for the service provided and as a supplement to the service provider's income. (Idaho Code § 63-3613).

The Petitioner argues that this statute was amended by the legislature for the purpose of clarification and, regardless of the effective date of this amendment, reflected how the statute should have been interpreted all along.

## Relevant Law & Conclusion

Idaho Code § 63-3619 imposes a sales tax on every retail sale. This tax applies to the sale of tangible personal property and other sales specifically included by law. The statutory definition of a sale contains the relevant inclusion:

Idaho Code 63-3612. Sale.

...(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

...(b) Furnishing, preparing, or serving food, meals, or drinks and nondepreciable goods and **services directly consumed by customers included in the charge thereof.** (Emphasis added. Idaho Code § 63-3612(2)(b)).

Based on this law and IDAPA 35.01.02.43.05 quoted above, the charges for catered meals and associated services have long been included in the taxable sales price by the Commission. The only consistent exclusion has been voluntary gratuities which are specifically exempted by Administrative Rule. This treatment is consistent with taxation of sales of [Redacted] meals in which the entire charge is subject to sales tax despite the portion of the charge that could be attributed to services provided, such as the [Redacted], management, and [Redacted].

The changes to Idaho Code § 63-3613 were given effect retroactively to January 1, 2011, by the legislature. The Commission takes this as clear guidance that the legislature intended the change in statute to take effect on January 1, 2011, and no earlier. The Commission is an administrative agency, not a legislative one. It will not substitute an alternative interpretation when it finds no ambiguity in the statutes.

The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Albee v. Judy, 136 Idaho 226, 230, 31 P.3d 248,252 (2001). If the language of the statute is unambiguous, "the clear expressed intent of the legislature must be given effect and there is no occasion for construction." Udy v. Custer County, 136 Idaho 386, 388, 34 P.3d 1069,

1071 (2001) (citing: Ada County Assessor v. Roman Catholic Diocese, 123 Idaho 425,428, 849 P.2d 98,101 (1993)).

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 May 1, 2007, through May 31, 2010.

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 October 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 June 18, 2010 is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$40,426	\$11,741	\$52,167
	Payment Received	<u>(9,748)</u>
	Amount Due	<u>\$42,419</u>

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.