

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26058
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On April 12, 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] (Petitioner), proposing sales tax, use tax, and interest for the periods April 1, 2009, through March 31, 2012, in the total amount of \$36,310.

On June 13, 2013, 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 February 6, 2014. Representing the Commission at the hearing were Tax Policy Specialist [Redacted] and Deputy Attorney General [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

The Petitioner is a family-owned retailer that sells [Redacted] and miscellaneous items commonly found at convenience stores. Their sales people do sales in [Redacted]. The Bureau conducted a routine audit of the Petitioner’s business for the purpose of determining sales and use tax law compliance. After its review, the Bureau issued a Notice asserting errors in sales, fixed asset purchases, and ordinary purchases.

The Petitioner protested the Notice identifying multiple issues it wanted addressed in the redetermination. These issues were addressed during the informal hearing at which time, the Petitioner was offered time to provide additional documentation for review. Additional documentation was provided and as a result, the Bureau made adjustments to the original Notice, thereby resolving some of the issues. Each of the unresolved issues is addressed separately in the following analysis.

Protest Analysis

Personal Purchases

The first unresolved issue was the Bureau's imposition of use tax on purchases made by the Petitioner on behalf of the owner of the business. Those items, for which no sales tax was paid to the vendor or no invoices were provided to the Bureau were held subject to use tax.

The taxpayer argued that these purchases were not made for the business, but rather the owner of the business and, as such, these purchases should not be included in the examination of ordinary purchases.

In Idaho, the sale, purchase, and use of tangible personal property are 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).

There is no use tax exemption for the purchase of personal items, whether purchased by a business or otherwise. It should be noted that while the Commission does not generally review personal purchase records of the owners of a business when auditing a business, the Petitioner in

this instance combined personal purchases with business records and as a result, those purchases were subject to review in the audit. The Commission upholds the Bureau's findings.

Nontaxed Sales

The second unresolved issue was the Bureau's imposition of sales tax on sales made to customers for whom the Petitioner had valid exemption claim forms on file showing that the customers claimed exemption from sales tax under Idaho Code § 63-3622D, known as the "production exemption." The Bureau does not question whether the Petitioner obtained proper exemption documentation for these nontaxed sales, but rather asserts the sale of these particular products is specifically excluded from the production exemption by law. 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.

Idaho Code § 63-3622(a) states that all sales in Idaho are presumed to be subject to sales tax and the burden of justifying a nontaxed sale lies with the seller. When a purchaser executes a valid exemption claim form (Form ST-101 in this case), the seller is relieved of the obligation to collect tax, unless the sale is "taxable as a matter of law" (Idaho Code § 63-3622(g)).

Idaho Code § 63-3622(d) states that "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 tax in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption."

Idaho Code § 63-3622(g) states that “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” (emphasis added).

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 unequivocally 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 two 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 – First Exclusion

The first exclusion the Bureau identified in its examination of nontaxed sales was for the sale of [Redacted] with a unit price less than \$100. Examples of items that were held in this

category were [Redacted] and [Redacted]. The term “hand tool” is specially defined in the production exemption as “an instrument used or worked by hand” (Idaho Code § 63-3622D(f)(1)). Sales Tax rule 079.05.c clarifies that “a hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be” is not exempt. Due to the breadth of this definition, the Commission has traditionally applied the term to a wide variety of property. A hammer, a broom, a lumber crayon, and a pencil are just a few examples of property that the Commission has treated as hand tools in the past.

The Commission reviewed the list of the products the Bureau classified as hand tools and found these classifications to be reasonable and upholds the Bureau’s findings. When the Petitioner is making the sale of hand tools with a unit price less than \$100, these sales are taxable as a matter of law.

Nontaxed Sales – Second Exclusion

The Bureau identified the other relevant exclusion for the remaining items held subject to sales tax to be “machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies” (Idaho Code § 63-3622D(f)). The Bureau held that this list of items could only be used in a manner that is incidental to manufacturing, processing, mining, farming, or fabricating operations and that sales tax should have been collected by the vendor when these items were sold. Based on this reasoning, the Bureau asserts that the sale of these products are “taxable as a matter of law.”

The Commission reviewed the list of the products the Bureau classified as incidental to the production process and found these classifications to be reasonable. While the Commission

generally agrees with the Bureau, it is important to note that the Commission has long held that where any use for a product could be identified that fell within the production exemption, the retailer would not be held liable for exempting a sale of that product to a customer that had submitted an exemption form to them. The Petitioner was given the opportunity to provide an explanation as to how each product that the Bureau held “taxable as a matter of law” could be used in the production process. None was provided. Therefore, the Commission reviewed the listing of these products and found the Bureau’s determination to be reasonable and upholds the Bureau’s findings.

The Commission finds the modified 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, 2009, through March 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 April 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 April 12, 2013, 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>
\$22,328	\$0	\$3,816	\$26,144

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.