

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26154
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On September 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 January 1, 2006, through May 31, 2011, in the total amount of \$287,428.

On October 31, 2012, the Petitioner filed a timely appeal and petition for redetermination of the Notice. Additional documentation was provided for the Bureau’s review resulting 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, having reviewed the audit file and considered the information provided at the hearing and in the months following, hereby modifies audit findings for the reasons detailed below.

Background and Audit Findings

The Petitioner is a [Redacted] based in [Redacted], Idaho. 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. The Bureau found errors in the sales tax reconciliation which revealed that not all sales tax collected from the Petitioner’s customers, had

been remitted to the state of Idaho. Errors were also identified in the examination of untaxed sales and in the examination of ordinary purchases. The Bureau imposed a 50 percent fraud penalty for the failure to remit the collected tax.

Relevant Tax Code for the Imposed Tax Liability

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies (Idaho Code § 63-3619).

A retailer has a responsibility to remit all sales tax collected to the state of Idaho. IDAPA 35.01.02.105 states that “[t]he sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules.”

Idaho Code § 63-3623A identifies all moneys collected by retailers in compliance with Chapter 36, Title 63, Idaho Code, as state money and goes on to state that “[s]uch money shall not, for any purpose, be considered to be a part of the proceeds of the sale to which the tax relates.”

The failure to remit all taxes collected from customers may constitute fraud:

Penalties and additions to the tax in case of deficiency. (a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid. (Idaho Code § **63-3046**)

Furthermore, for sales tax collected and not remitted, there is no statute of limitations on the assessment or collection,

The periods of limitation upon assessment and collection provided in this section shall not apply:

- (1) In cases where the facts disclose a false or fraudulent act with the intent to evade tax, or
- (2) To taxes collected by a retailer, seller or any other person who has failed to pay over such taxes to the state tax commission (Idaho Code § 63-3633(d)).

Analysis

The Petitioner and the Bureau are in agreement regarding the modified audit findings and 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, 2006, through May 31, 2011.

The Bureau added a fraud penalty to the sales and use tax deficiency. Idaho Code § 63-3046(b) states that "if any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency." . . . The Petitioner requested an abatement of the penalty to the deficiency. The Petitioner states that any errors made were not an intentional or careless disregard for the tax rules and procedures.

The Commission reviewed Petitioner's penalty further and found that there is insufficient evidence to support the imposition of a fraud penalty. The penalty has been adjusted to a negligence penalty to be consistent with this conclusion. The Commission's imposition of a negligence penalty and interest are appropriate per Idaho Code §§ 63-3045 and 63-3046. Interest is calculated through July 31, 2015, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Modified Notice of Deficiency Determination dated September 14, 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>
\$152,535	\$7,627	\$37,802	\$197,964

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.
