

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 REDACTED) DOCKET NO. 39153
)
)
) Petitioner.)
)
) DECISION
)
 _____)

On August 8, 2014, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued two Notices of Deficiency Determination (Notice) to Redacted (Petitioner), one proposing use tax, penalty, and interest for the period October 1, 2013, through October 31, 2013, in the total amount of \$4,216 and the other proposing withholding tax, penalty, and interest for the period December 1, 2013, through December 31, 2013, in the total amount of \$2,860.

On October 8, 2014, the Petitioner filed a timely appeal and petition for redetermination of the Notices. At the Petitioner’s request, the Commission held a telephonic informal hearing on June 25, 2015. Present at the informal hearing were Redacted. 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, Redacted improvements in the state of Idaho. The Petitioner is not registered with Idaho as a retailer nor as an Idaho employer for withholding.

The Bureau requested that the Petitioner provide documentation for the costs of materials used for this job and information on the Idaho withholding for the employees that performed the work. No documentation was provided and as a result, the Bureau estimated the cost of materials for the job and held this amount subject to use tax. The Bureau also estimated Idaho

withholding for the employees that performed the work and held this amount subject to withholding tax.

Petitioner's Protest

The Petitioner protested the Notices essentially refusing to pay Idaho withholding tax or the Idaho use tax associated with the Idaho contract. The Petitioner stated in the protest letter that it reconstructed a road on Redacted that has nothing to do with Idaho except being within the state. The Petitioner also noted that the state of Idaho benefits from this project without putting any money into the project or providing any services or assistance toward the project.

The Petitioner acknowledges in the protest letter that it withheld Redacted income tax for the work that was done in Idaho and listed each of the employment related taxes that were paid during that period. With respect to Idaho withholding, the Petitioner states that it will not be paying any more taxes or filing any more returns nor will it ask its employees to do so.

With respect to Idaho use tax, the Petitioner acknowledged in the protest letter that it performed a project in the state of Idaho and that there were materials incorporated into the project.

Withholding – Relevant Tax Code and Analysis

Idaho Code § 63-3035(a) states, in pertinent part, that:

Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus, or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section.

Idaho Code § 63-3018 defines the term employee to mean an employee as defined in the Redacted.

IDAPA 35.01.01.871.01 states that for employers other than farmers:

01. An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if:

- a. The employer is required to withhold for federal purposes; and
- b. The employee is an Idaho resident; or the employee is a nonresident and compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the nonresident employee for services performed in Idaho.

For the purpose of Idaho withholdings on wages, Idaho law looks to the filing requirement Redacted. In this case, the Petitioner acknowledges withholding for Redacted employees for Redacted. After the informal hearing, the Petitioner provided the Commission with reports of the amounts earned. A review of these reports revealed that the Petitioner paid employees \$14,312 in gross wages for the project; however, the Petitioner removed the employee names from the reports. As a result, the Commission was unable to tie the earnings directly to the employees that crossed the \$1,000 earnings threshold and were required to file an Idaho income tax return.

The Commission agrees with the Bureau that the Petitioner had a responsibility to withhold and pay income tax on wages or salaries paid to its employees for the work performed in the state of Idaho.

Sales and Use Tax – Relevant Tax Code and Analysis

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. Payment of use tax extinguishes the sales tax obligation. (Idaho Code §§ 63-3612 and 63-3621)

For sales and use tax purposes, a contractor improving real property is the consumer of any materials that become part of the realty and owes a sales or use tax on such materials:

All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property (Idaho Code § 63-3609(a)).

The law is clear that if a contractor has used materials in the construction of real property in Idaho, the contractor will owe sales or use tax. The term “use” as utilized here is a specially defined term for purposes of the use tax:

The term “use” includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax.... (Idaho Code § 63-3615(b)).

The Commission acknowledges that the Petitioner was working for the Redacted but as a contractor, the Petitioner had a requirement to pay sales tax to their vendor, or use tax to the state of Idaho, on all purchases of tangible personal property they incorporate into realty in the state of Idaho regardless of whether the property owner would owe tax.

The protest letter does state that the value of those materials was far less than the Bureau estimated. Additional documentation was provided after the informal hearing and was forwarded to the Bureau for review. The Bureau concluded based upon the documentation

provided by the Petitioner and the Redacted documents that the amount of the proposed tax liability was actually understated. Idaho Code § 63-3631 prohibits the Commission from increasing a proposed liability once an informal hearing has been conducted. As a result, no increase was made to the proposed liability.

The Commission will uphold the Notice. A determination of the Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984), and the burden is on the Petitioner to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

The Petitioner has not shown the deficiency to be erroneous, but in fact, the information provided shows the deficiency to be understated. Again, the Commission upholds the Petitioner's use tax liability for the period October 1, 2013, through October 31, 2013, and the withholding tax liability for the period December 1, 2013, through December 31, 2013.

The Bureau added interest and penalty to both the use tax deficiency and the withholding tax deficiency. The Commission reviewed those additions, found them to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through February 29, 2016, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notices of Deficiency Determination dated August 8, 2014, are hereby APPROVED in accordance with the provisions of this decision and are AFFIRMED and MADE FINAL.

IT IS ORDERED that the Petitioner pay the following tax, penalty and interest:

<u>TAX TYPE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
USE	\$3,888	\$194	\$351	\$4,433
WITHHOLDING	2651	133	223	<u>3,007</u>
			TOTAL DUE	<u>\$7,440</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 included with this decision.

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.
