

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39167
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On October 3, 2014, 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, 2014, through January 31, 2014, in the total amount of \$1,403.

On October 7, 2014, the Petitioner filed a timely appeal and petition for redetermination of the Notice. At the Petitioner’s request, the Commission held a telephonic hearing on March 19, 2015. Present at the 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 to uphold the modified Notice of Deficiency Determination.

Background and Audit Findings

The Petitioner is an [Redacted]-based [Redacted] that [Redacted] [Redacted]. The Petitioner is not registered with Idaho as a retailer nor do they have a use tax reporting number.

In the routine review of an Idaho commercial construction contract, the Bureau found that the Petitioner was hired to [Redacted] in a real property improvement in the state of Idaho. The Bureau determined that no sales or use tax had been paid on the materials that the Petitioner incorporated into this Idaho project and held those materials subject to use tax. The Bureau

requested, but did not receive, documentation verifying the value of the materials used by the [Redacted]. In the absence of evidence, the value of the material was estimated to be fifty-five percent of the total contract amount. During the appeals process, the Petitioner provided documentation to the Bureau verifying the value of the materials, which resulted in a reduction of the proposed liability.

Applicable Tax Law and Administrative Rules

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)).

Based on the above, if a contractor has used materials in the construction of real property, 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).

With respect to a contract to fabricate building materials and sell those [Redacted] to construction contractors without any requirement to install the materials, this is a sale of tangible

personal property, and as such, is subject to the collection of sales tax from the customer on the fully fabricated sales price of the materials.

With respect to a contract to fabricate and install building materials, regardless of whether a subcontractor is hired to do the installation, this is a contract to improve real property:

When a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor, with a contract to furnish and install goods, fabricates the goods and hires a subcontractor to do the installation, the amount subject to tax is the cost of material to the contractor who fabricated the goods. (IDAPA 35.01.02.12.09.a).

Currently, neither Idaho law nor administrative rules make a distinction as to whether the identity of the subcontractor that installs goods into real property makes a difference in the application of IDAPA 35.01.02.12.09.a referenced above. IDAPA 35.01.02.12.11 merely indicates that a subcontractor is treated the same as a general contractor:

In general, a subcontractor is treated the same as a general contractor. Whether his contract is with the owner or the general contractor, the subcontractor pays tax on materials he buys to improve real property. Like any contractor, the subcontractor could be employed to work on or with material purchased by the general contractor or the owner, with one or the other paying tax on the material purchased. These services rendered by the subcontractor are not taxable. His relationship with the owner or general contractor is no different than the relationship between the contractor and owner. However, the provisions of Subsection 011.10 of this rule apply equally to a subcontractor. (IDAPA 35.01.02.12.11)

Petitioner's Protest & Analysis

The Petitioner protested the imposition of use tax on the materials that it incorporated into the Idaho project, claiming that [Redacted], the contractor that hired it to do the real property improvement, was responsible for any sales or use tax associated with the contract to improve real property. Even in the event that there was an agreement between the Petitioner and [Redacted], the state of Idaho is not bound by an agreement to which they were not a party. The Petitioner provided no other argument against the tax imposed by the Bureau.

With respect to this contract to fabricate and install building materials, the Commission finds that the Petitioner acted as a contractor improving real property in Idaho. In general, a contractor is defined as the consumer of materials that they use (Idaho Code § 63-3609(a)). IDAPA 35.01.02.12.09 specifies that when a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor fabricates the goods that it installs into real property, the amount subject to tax is the cost of material to the contractor who fabricated the goods (IDAPA 35.01.02.12.06). In this case, no sales tax was paid on the materials used to fabricate and install the [Redacted] into Idaho real property. As a result, the Commission will uphold the Notice. Absent further information to the contrary, 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 January 1, 2014, through January 31, 2014.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed that addition and found it to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through November 30, 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 October 3, 2014, 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$956	\$87	\$1,043

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.
