

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-136-603-136
<b>[Redacted]</b>	)	
,	)	
	)	DECISION
Petitioner.	)	

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On October 29, 2015, the staff of the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination (Notice) to **[Redacted]**

(Petitioner), denying a refund claim of \$90,499.09 in use tax for the period January 1, 2013, through December 31, 2014.

On December 4, 2015, the Petitioner filed a timely appeal and petition for redetermination. At the Petitioner's request, the Commission held a telephonic hearing on March 31, 2016. 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, hereby issues its decision to uphold the Notice.

**BACKGROUND**

The Petitioner, a **[Redacted]** company, provides **[Redacted]** samples free of charge to medical service providers in Idaho (e.g. doctors, hospitals, medical facilities, etc...). On July 10, 2015, the Petitioner requested a refund in the amount of \$90,466.09 for use tax it claims to have erroneously self-assessed and paid to the state of Idaho for **[Redacted]** samples provided during 2013 and 2014.

The Petitioner distributes **[Redacted]** samples to practitioners free of charge as a marketing tool to promote the sale of that <sup>[Redacted]</sup>. The Bureau determined that this constitutes a taxable use and believes this determination is consistent with Idaho's treatment of this issue in the past.

Idaho Code § 63-3615(b) states that "[t]he term 'use' includes the exercise of any right or power over tangible personal property incident to the ownership." Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The rate of the use tax is the same as the sales tax imposed by Idaho Code § 63-3619. The use tax is a complementary tax to the sales tax. Every state that imposes a sales tax also imposes a use tax. The use tax is imposed when the purchaser or user of the property in Idaho has not paid sales tax on the purchase of the property.

The Bureau determined that the Petitioner had appropriately remitted use tax to the state of Idaho for the **[Redacted]** samples that it gave to its Idaho customers and denied the requested refund. The Petitioner protested the refund denial asserting that Idaho Code § 63-3622N provides an exemption from use tax for the distribution of **[Redacted]** samples because they are given to practitioners who ultimately administer or distribute those samples to individuals.

### ANALYSIS

It is a rule of statutory construction that exemptions are to be construed narrowly. The Idaho Supreme Court has stated that tax exemptions are never presumed nor will a statute granting the exemption be extended by judicial construction so as to create an exemption not specifically authorized. Canyon County v. Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984); Sunset Memorial Gardens, Inc. v. State Tax Commission, 80 Idaho 206, 327 P.2d 766

(1958). Also, statutes granting tax exemptions must be strictly construed against the taxpayer and in favor of the state. Hecla Mining Co. v. Idaho State Tax Commission, 108 Idaho 147, 697 P.2d 1161 (1985); Canyon County v. Sunny Ridge Manor, Inc.; Leonard Constr. Co. v. State Tax Commission, 96 Idaho 893, 539 P.2d 246 (1975).

Idaho Code § 63-3622N provides that drugs, as defined therein, are exempt from taxes when “administered or distributed by a practitioner or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner . . .” The Petitioner is a **[Redacted]** company distributing **[Redacted]** samples free of charge to practitioners for promotional or advertising purposes. The Petitioner is not a practitioner administering or distributing <sup>[Redacted]</sup> Petitioner is also not purchasing <sup>[Redacted]</sup> under a prescription or work order of a practitioner.

The Commission finds that the Petitioner did not provide evidence adequate to establish that the Notice is incorrect. As a result, the Commission will uphold the Notice. A determination of the State Tax Commission is presumed to be correct. Albertson’s, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the Petitioner to show that it is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. (1986).

The Petitioner filed two refund claims with substantially the same facts and analysis; the only difference between the two claims was the period covered and the dollar amount requested. This decision pertains to the denial of the second refund claim filed by the Petitioner; the first Decision (Docket No. 39317) upheld the denial of the Petitioner’s refund claim.

THEREFORE, the Notice dated October 29, 2015, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

An explanation of the Petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2016, 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.