

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-274-490-880
[Redacted])	
)	
)	DECISION
Petitioner.)	
_____)	

On September 8, 2015, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to **[Redacted]** (Petitioner). The Notice proposed two items: sales tax, penalty, and interest for the period January 1, 2007, through December 31, 2014; and amusement device permit fees (in lieu of sales tax) for the period July 1, 2010, through July 1, 2014. The total amount due, as shown on the Notice, is \$10,024.

The Petitioner filed a timely appeal and petition for redetermination of the Notice, postmarked November 10, 2015. In its letter, the Petitioner requested permission to submit business records by February 10, 2016, for consideration by Bureau staff. No additional records were received by the date specified. The Petitioner did not respond to hearing rights letters sent by the Commission on June 13, 2016, and August 2, 2016, and has provided nothing further for the Commission to consider. The Commission, having reviewed the audit file, hereby upholds the audit findings for the reasons detailed below.

Background

The Petitioner operates an arcade located within a shopping mall in Idaho. The arcade offers several machines for entertainment. All are coin-operated. Some are arcade games with no associated prize. Others are games of skill or luck, where there is a chance of winning a

prize. The remaining machines dispense small toys or candy with every coin deposited, similar to a gumball machine. The sales price of these items is over 12 cents.

The Bureau asserted the Petitioner, a Utah LLC which has never held an Idaho seller's permit, began operations in 2007, and made sales subject to tax in calendar years 2007 through 2014. Additionally, the Bureau held that several of the machines owned and operated by the Petitioner in Idaho during calendar years 2010 through 2014 qualified as "amusement devices," and that each machine meeting these requirements was required to have a permit (decal) as such. The Petitioner did not provide business records during the audit, and the amount the Bureau held subject to sales tax is based upon the Bureau's physical inspection of the business operated by the Petitioner, as well as an analysis of sales revenue reported by the Petitioner to a third party.

Relevant Tax Code for the Asserted Tax Liability

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies. Idaho Code § 63-3619. Idaho Code § 63-3619(b) specifies "The tax hereby imposed shall be collected by the retailer from the consumer."

A retailer has a responsibility to remit all sales tax collected to the state of Idaho. 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." IDAPA 35.01.02.105 also 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."

Machines that guarantee a prize are considered to be vending machines. The sale of tangible personal property through a vending machine is a taxable transaction, unless an

exemption applies. One such exemption is Idaho Code § 63-3622L, which provides in pertinent part, “There is exempted from the taxes imposed by this chapter the sale of articles through a coin-operated vending machine for a total consideration of eleven cents (\$.11) or less.” IDAPA 35.01.02.058 provides two methods of calculating the taxable value of vending machine sales. The first method is based upon the cost of goods sold through the vending machine, while the second method derives the value of taxable sales from the income produced by the vending machine.

Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee (aka decal fee or tax) in lieu of sales tax remitted from each device’s revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator’s failure either to buy the permits timely or display the decals that are evidence the required fees have been paid.

Protest

In its protest, the Petitioner acknowledged it had operated in Idaho for eight years, but asserted it was unaware of its responsibilities under the Idaho Sales Tax Act. The Petitioner stated it had begun the process to become compliant with Idaho laws, and requested an extension of approximately three months to compile its records and provide additional information to the Bureau.

Analysis and Conclusion

The Petitioner, as an Idaho retailer, had a responsibility to collect and remit sales tax on all sales subject to the Sales Tax Act. In its appeal, the Petitioner acknowledged that it had been operating in Idaho for eight years. On October 13, 2013, the Bureau mailed the Petitioner a questionnaire regarding its business operations within Idaho. The Petitioner responded without

answering the questions, instead making the statement “We own no business of this type in Idaho or Utah or anywhere and never have.” However, the machines observed by the Bureau staff during multiple inspections of the Petitioner’s business bear stickers with the Petitioner’s telephone number and email address. Furthermore, some of the machines had decals from jurisdictions within Utah, indicating the Petitioner’s awareness and prior compliance with government regulation of its machines.

In its protest, the Petitioner requested time to compile returns for the audit period and become compliant with the provisions of the Idaho Sales Tax Act. The Bureau allowed the Petitioner almost three months to obtain a seller’s permit and purchase decals for the machines. The Petitioner visited the Commission during this period to obtain the necessary documents, and received both hard copy forms and instructions regarding the online application process. However, the Petitioner did not exercise either option for registration, and as of the date of this decision remains unpermitted, operating amusement devices without the required decals.

The Notice includes amounts due for both Idaho sales tax, generated from vending machine sales, and fees for the decals required for the amusement devices operated by the Petitioner. The Petitioner did not provide any records during the audit; therefore, the Bureau estimated the amounts due based upon third-party information. The Commission found these estimates to be reasonable.

The Petitioner did not provide evidence adequate to establish that the amount asserted in the adjusted Notice of Deficiency Determination 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), 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 Bureau added interest and penalty to the sales 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 January 31, 2017, 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 8, 2015, 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:

TAX	PENALTY	INTEREST	TOTAL
\$5,029	\$4,221	\$1,016	\$10,266

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 _____ 2016.

IDAHO STATE TAX COMMISSION

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.
