

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED] ,) DOCKET NO. 1-328-246-784
) 0-231-911-424
) 0-941-912-064
)
) Petitioners.) DECISION
)
_____)

On May 13, 2015, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued three Notices of Deficiency Determinations (Notices) to [Redacted] (Petitioners), proposing sales tax and interest in the total amount of \$1,494, travel and convention tax in the total amount of \$497, and greater Boise auditorium tax in the total amount of \$1,245 for the periods January 1, 2011, through December 31, 2014.

On June 18, 2015, the Petitioners filed a timely appeal and petition for redetermination of the Notices. At the Petitioners request, the Commission held an informal hearing on September 28, 2015. Present at the informal 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. For the reasons that follow, the Commission upholds the audit findings.

Background and Audit Findings

The Petitioners, residents of the state of Idaho, rent out a room in their Boise home for short term lodging using an online platform provided by [Redacted], Inc. Through [Redacted], Inc., an individual can create a listing page on the website to provide short-term lodging and set pricing, availability, and reservation requirements for potential guests. Once a guest is approved to stay, the guest makes payment for the reservation total, plus a guest service fee for the lodging

on the website. [Redacted], Inc. retains 3 percent of the reservation total (before fees and taxes) as well as the guest service fee that ranges between 6 to 12 percent of the reservation total (before fees and taxes). The balance is remitted to the individual that is providing the lodging.

In this case, the Petitioner had been providing short term lodging since 2011 through [Redacted], Inc. The Bureau held that the lodging fees were subject to a 6 percent sales tax, a 2 percent travel and convention tax, and a 5 percent greater Boise auditorium tax.

Petitioner's Protest & Analysis

The Petitioners do not dispute that they have been renting a room in their home for short term lodging using the online platform described earlier and assert that they have paid all federal and state income taxes associated with that rental. The Petitioners believe that the rental should not be subject to the taxes assessed by the Bureau and have listed several arguments in their protest letter.

The Petitioners cite Idaho Code § 67-4711(5) which defines hotel/motel as an establishment providing lodging to members of the public for a "fee" and point out that a couple renting out a room for short term lodging does not meet this definition. The Petitioners believe that the definition provided for in statute shows that the Idaho Legislature intended to tax establishments not individuals.

In Idaho, the sale of lodging is subject to a 6 percent sales tax (Idaho Code § 63-3612(2)(g)) and a 2 percent Hotel/Motel Room and Campground Sales Tax (Idaho Code § 67-4711 *et. seq.*), commonly known as the Travel and Convention tax. The sale of lodging in the city of Boise is subject to a 5 percent Greater Boise Auditorium District Tax (Idaho Code § 67-4917B) in the event that it falls within the geographic boundaries of that district.

Neither the Sales Tax Act nor the Hotel/Motel Room and Campground Sales Tax code mention short term lodging in a home *per se*. Rather, as noted above, the sales tax statute, Idaho Code § 63-3612(2)(g), refers to “hotel, motel, campground, or trailer court accommodations.”

The travel and convention tax code defines the terms “hotel/motel”:

“Hotel/Motel” means an establishment which provides lodging to members of the public for a fee, and **shall include** condominiums, townhouses or **any other establishment which makes a sale** as herein defined (Idaho Code § 67-4711(5), emphasis added).

Each of the two tax codes has administrative rules intended for interpretation of the code sections and their application to transactions. Sales Tax Administrative Rule 028 refers the reader to the travel and convention tax administrative rules for its full implementation:

Fees charged for providing hotel, motel, and campground accommodations are subject to the state sales tax, the Idaho Tourism and Convention taxes and may be subject to the Greater Boise Auditorium District sales tax. These taxes are explained in the Commission’s rules entitled Hotel/Motel Room and Campground Sales Tax Rules, IDAPA 35.01.06 (IDAPA 35.01.02. 028.01).

The Hotel/Motel Room and Campground Sales Tax Rules provide a broad definition of “hotel” and “motel” that the Commission has long asserted encompasses room rental in the definition of lodging establishments:

Hotel or Motel Defined. The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business (IDAPA 35.01.06.010.02).

The Petitioners concede that the definition in IDAPA 35.01.06.010.02 could apply to the room rental, but believe that the rules use of the word “rooms” rather than “room” which is what they are renting would exclude them from the definition of Hotel/Motel. The Commission believes that whether the Petitioners are renting one room or multiple rooms, it meets the definition of a Hotel/Motel.

The Petitioner argues that [Redacted] Inc. technically rented the room and collected the money from the guests and questions why the Bureau did not pursue them in this case. Idaho Code § 63-3611(d) states that:

When the state tax commission determines that it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the state tax commission may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this act. (Idaho Code § 63-3611(d))

The Commission has the right to hold the Petitioners responsible for the sales that were made in this case regardless of which party made the sale of the short term lodging. The Petitioners chose to list themselves as a host on the [Redacted] Inc. site. To create their profile page listing, the Petitioners filled out a description, provided photos, and how much they wanted to charge per night. Once the listing is complete, the Petitioners determine who stays and when. The Petitioners room is available for short-term rental and has advertising exposure on the [Redacted], Inc. website. The Petitioners list rental income on income tax returns, as well as expenses and depreciation. The Bureau held that all of these facts support that the Petitioners are acting as retailers.

The sales tax code defines “retailer” for the purpose of identifying those with a responsibility to collect tax on transactions that occur in-state. The Commission holds that the Petitioners can be defined as a retailer for sales tax purposes per Idaho Code § 63-3611.

Retailer engaged in business in this state. “Retailer engaged in business in this state” as used in this chapter means any retailer who:

(1) Engages in recurring solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state (Idaho Code § 63-3611).

The Commission holds that the Petitioners can be defined as a retailer for travel and convention tax and greater Boise auditorium tax purposes per IDAPA 35.01.06.010.02.

The Petitioners state that the amounts of the notices are incorrect because the Bureau used the rental income claimed on the Petitioners income tax return as the amount subject to tax and the amount reported includes the 3 percent fee that [Redacted] Inc. retained. The Commission agrees with the amount held by the Bureau and finds that the entire fee paid by the guest for short term lodging is subject to tax. The 3 percent fee that was withheld is an expense to the Petitioners rather than a reduction to the sales price subject to tax.

The Petitioners did not provide evidence adequate to establish that the amount asserted in the Notices is incorrect. As a result, the Commission will uphold the Notices. 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. 2 d 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.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Petitioners sales and use tax, travel and convention tax, and greater Boise auditorium tax for the period January 1, 2011, through December 31, 2014.

The Bureau added interest to the deficiencies. The Commission reviewed the addition, and found it to be appropriate per Idaho Code § 63-3045, and has updated interest accordingly. Interest is calculated through June 30, 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 May 13, 2015, are hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX TYPE</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
Sales Tax	\$1,416	\$132	\$1,548
Travel & Convention Tax	472	43	515
Greater Boise Auditorium Tax	1,179	111	<u>1,290</u>
		TOTAL DUE	<u>\$3,354</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the Petitioners' right to appeal this decision is enclosed.

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.
