

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23811
[Redacted])	
)	
)	
Petitioner.)	DECISION
)	

On October 7, 2010, 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 July 1, 2008, through July 31, 2010, in the total amount of \$11,527.

On October 13, 2010, the Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission sent a letter on April 11, 2011, advising the Petitioner of its right to an informal hearing, to which no response was received. A second letter was sent on June 1, 2011, advising the Petitioner of its right to an informal hearing. A third attempt was made to contact the Petitioner on November 4, 2014, at which time the Petitioner requested a copy of the audit work papers and a listing of sales and use tax returns filed for review prior to scheduling an informal hearing. The audit work papers were forwarded to the Petitioner via email on November 4, 2014, and the listing of returns was forwarded to the Petitioner via email on November 6, 2014.

Between November 19, 2014, and January 13, 2015, several telephone messages were left for the Petitioner in an attempt to find out how it would like to proceed with the petition for redetermination. On January 13, 2015, the Petitioner stated that it no longer wished to continue with the petition for redetermination. The Petitioner was advised how to withdraw the request

and a protest withdrawal form was sent so the appeal could be closed. To date, the Petitioner has not responded or withdrawn its protest.

The Commission, having reviewed the audit file, hereby upholds the audit findings for the reasons detailed below.

BACKGROUND

The Petitioner owns and operates a drive through restaurant in ^[Redacted], Idaho. The Bureau conducted a managed audit program examination of the Petitioner's business for the purpose of determining sales and use tax law compliance.

The Bureau asserted the Petitioner began operations in July 2008, but did not file sales and use tax returns until the fourth quarter of 2009. The Bureau also held that the Petitioner made purchases during the audit period that were not taxed at the time of purchase, nor had the Petitioner remitted a use tax on these items.

The Petitioner did not provide any business records during the audit. The amount the Bureau held subject to sales and use tax is an estimate, based upon an analysis of the available tax returns.

PROTEST ANALYSIS

The Petitioner protested the Bureau's imposition of sales and use tax, asserting it had two sales tax permit numbers, and posits that if the returns filed on both accounts were combined then there would be no deficiency in tax paid during the audit period.

The second sales tax permit number provided in the protest is for an individual account attributed to **[Redacted]**. Mr. **[Redacted]** was the corporate officer and agent for the Petitioner during the audit period. This account was active for one month, from July 1, until

July 31, 2009. No sales and use tax returns were filed, and no payments were applied; therefore, considering the history of this second account does not impact the audit results.

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 § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho.

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.”

ANALYSIS AND CONCLUSION

The Petitioner, as an Idaho retailer, has a responsibility to collect and remit sales tax on all sales subject to the Sales Tax Act. At no point does the sales tax collected belong to the retailer. The Petitioner has not disputed that its sales were taxable, nor has it disputed that it collected tax from customers. There is insufficient evidence to prove that the Petitioner remitted all the tax collected to the State of Idaho.

The Bureau held that the Petitioner made purchases during the audit period that were not taxed at the time of purchase, nor had the Petitioner remitted a use tax on these items. The Petitioner has not disputed that these purchases were made, nor has it provided any evidence of

the cost of these items. The actual value of these items could not be established, as purchases made for the business such as supplies or equipment were embedded into the Cost of Goods Sold line item reported on the Petitioner's income tax return. The Commission reviewed the gross income and cost of goods sold reported on the income tax returns filed by the Petitioner, and found the values subject to use tax assessed by the Bureau to be minimal given the size of the Petitioner's business; however, without any additional documentation, no adjustment to the Notice will be made.

The Bureau's review was complicated by the lack of documentation during the audit. The Commission has contacted the Petitioner numerous times in an effort to obtain additional records for the audit period. To date, no documents have been provided. Pursuant to Idaho Code § 63-3624, the Commission is authorized to examine the Petitioner's records, yet the Petitioner did not allow the Commission access to the records requested.

The Petitioner did not provide evidence adequate to establish that the amount asserted in the 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.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Petitioner's sales and use tax liability for the period July 1, 2008 through July 31, 2010.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code sections 63-

3045 and 63-3046, and has updated interest accordingly. Interest is calculated through December 31, 2016, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated October 7, 2010, 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
\$10,234	\$512	\$2,237	\$12,983

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.
