

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

In the Matter of the Protest of

**[Redacted]**

Petitioner.

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DOCKET NO. 24571

DECISION

On April 15, 2011, 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, penalty, and interest for the period January 1, 2009, through December 31, 2010, in the total amount of \$13,143.

On June 17, 2011, the Petitioner filed a timely appeal and petition for redetermination of the Notice. At that time, additional documentation was provided for review. The Bureau reviewed the documentation and modified the audit findings, which resulted in a decrease in the proposed liability.

The Commission wrote on February 29, 2012, advising the Petitioner of its right to an informal hearing, to which no response was received. A second letter was sent on April 24, 2012, advising the Petitioner of its right to an informal hearing. To date, the Petitioner has not responded.

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

### **Background**

The Petitioner owned and operated a business selling over-the-counter medications and diabetic supplies to both wholesale and retail customers. Most of the sales were conducted online. The Petitioner maintained a storefront in **[Redacted]**, Idaho, but the location acted primarily as a warehouse location for goods sold online; few retail sales were made at the store. The Bureau conducted an audit of the Petitioner's business for the purpose of determining sales and use tax law compliance.

The Bureau asserted the Petitioner, which has never held an Idaho seller's permit, began operations in January 2009, and made sales subject to tax in calendar years 2009 and 2010. The Petitioner provided limited business records during the audit, and the amount the Bureau held subject to sales tax is based upon an analysis of the documents provided by the Petitioner.

### **Protest**

The Petitioner protested the Bureau's imposition of sales tax, asserting the bulk of its sales were to customers located in other states. The Petitioner provided additional documents indicating the orders were shipped outside Idaho. As stated above, the Bureau accepted the documents provided by the Petitioner, and modified the audit findings accordingly.

In its protest, the Petitioner also acknowledged that sales tax was collected on purchases made by customers in Idaho, but was not remitted to the State of Idaho. The Petitioner did not specify why the sales tax collected was not remitted. In total, the Petitioner acknowledges in its appeal that \$511.40 of sales tax was collected and is owed to the State of Idaho.

### **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 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.”

An exemption from sales tax applies for sales made to out-of-state consumers. Idaho Code § 63-3622Q provides:

**OUT-OF-STATE SHIPMENTS.** There is exempted from the taxes imposed by this chapter the sale or purchase of tangible personal property which is shipped to a point outside this state for use outside this state pursuant to a contract of sale by delivery by the vendor to such point by means of:

- (a) Facilities operated by the vendor;
- (b) Delivery by the vendor to a carrier for shipment to a consignee at such point; or
- (c) Delivery by the vendor to a customs broker or forwarding agent for shipment outside this state.

### **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 the sales it made to Idaho consumers would be subject to sales tax, and that it had failed to remit these taxes to the State of Idaho. At issue is the amount of tax due on sales made to Idaho customers. The Petitioner provided detailed information in its appeal, accounting for a total of \$511.40 in sales

tax due on \$9,510.04 in sales made in Idaho or to customers located in Idaho via telephone or over the Internet. However, the Bureau found that after removing the out-of-state sales documented by the Petitioner, the remaining sales (where the recipient's location was either not provided by the Petitioner, or was confirmed by the Petitioner to be in Idaho) totaled \$10,059.54. Without any evidence to the contrary, the Bureau held these sales to be taxable, and the adjusted tax liability totals \$603.57.

The Commission agrees that the sales made during the audit period to Idaho consumers are subject to sales tax. The Petitioner did not respond to the Commission's letters, or provide any additional documentation to indicate the \$549.50 difference in taxable sales as calculated by the Bureau, should not be subject to sales tax. 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.

The Petitioner did not provide adequate evidence to establish that the amount asserted in the adjusted 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) and the burden is on the taxpayer 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 the 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 April 15, 2011, 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
\$603	\$30	\$134	\$767

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

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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.