

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24946
<b>[Redacted]</b>	)	
,	)	DECISION
	)	
Petitioner.	)	
_____	)	

On February 24, 2012, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to **[Redacted]** (Petitioner), **[Redacted]**, asserting amusement device permit penalties totaling \$1,000 for the period July 1, 2011, through June 30, 2012.

The Petitioner protested the penalty in a letter received April 9, 2012. The Commission sent a hearing rights letter on November 1, 2012. The Petitioner responded, and requested an informal hearing to be held via telephone. Two telephonic informal hearings were set, on November 1, 2012 and December 3, 2012. On each of these dates, the Commission was unable to establish contact with the Petitioner. Subsequent to these scheduled hearings, the Commission attempted to contact the Petitioner by telephone and letter in January 2013, but received no response. The Commission received a letter from the Petitioner on April 15, 2013, restating his position regarding the penalty imposed. No further communication was received from the Petitioner.

Having reviewed the audit file, the protest letter, and applicable Idaho statutes, the Commission hereby upholds the Notice for the following reasons.

**Background**

The Petitioner operates several amusement devices, such as jukeboxes and video games, in various locations within Idaho. Idaho Code § 63-3623B imposes upon owners or operators of

certain amusement devices an annual permit fee 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 which are evidence that the required fees have been paid. The code section is noted below, in pertinent part:

**Amusement devices.** (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices...

**(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year.** Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

**(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees...**

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code... (Idaho Code § 63-3623B. Emphasis added).

The Commission sent a permit renewal notification letter to the Petitioner on May 24, 2011, as a reminder that an application for decals was due by July 1, 2011. On August 25, 2011, the Petitioner telephoned the Commission and ordered 20 decals. As noted previously, the Commission subsequently issued a Notice for \$1,000, calculated as a \$50 penalty per permit for 20 permits.

### **Protest**

In his protest, the Petitioner contends he called the Commission in June 2011 to purchase decals, but was told the decals were not available at that time. The Petitioner asserts that when he was able to order the decals in August 2011, he waited several weeks and did not receive anything from the Commission. It was only after he called a third time, five or six weeks later, that he received the decals. Additionally, the Petitioner states that he only had five machines at the time he purchased the decals, and added other machines later in the year.

### **Analysis and Conclusion**

The Petitioner first obtained amusement device decals from the Commission in 1996 and consistently purchased decals in subsequent years, demonstrating an awareness of the requirement to obtain decals on an annual basis.

Each year, the Commission sends a reminder letter to amusement device permit holders, such as the Petitioner. Reminder notifications are not statutory. The Commission sends them as part of its compliance and enforcement activities. It believes that the renewal letters are sufficient for this purpose based on the high level of compliance experienced. In spite of the annual reminder letter mailed by the Commission, the Petitioner has obtained his decals after the due date of July 1 on several occasions, incurring a penalty in each instance. The Commission does not have any record of the Petitioner attempting to purchase decals in June 2011. The first contact noted by the Commission regarding the decals for the period in question is the Petitioner's call to purchase 20 decals on August 25, 2011, well after the due date of July 1, 2011.

In addition, the Petitioner did not provide any evidence that he owned and operated only five amusement devices at the time the decals were purchased. The Commission provided the

Petitioner with the opportunity to return any unused decals for the year in question, but no decals were received; therefore, the penalty was calculated based upon the 20 decals ordered by the Petitioner.

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

THEREFORE, the Notice of Deficiency Determination dated February 24, 2012, 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 penalty:

DEVICES	PENALTY	TOTAL
20	\$1,000	\$1,000

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.

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