

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 0-248-950-784
)	
Petitioner.)	DECISION
)	

On May 26, 2016, 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 March 1, 2012, through February 28, 2015, in the total amount of \$42,165. After the Notice was issued, Petitioner submitted additional documentation regarding some of the items held taxable in the audit. The Bureau reviewed these documents, and determined an adjustment was appropriate. The Notice was modified, and now reflects a total amount due of \$37,133.

On July 26, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on December 13, 2016. 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 upholding the Notice as modified.

Background and Audit Findings

Petitioner is a contractor improving real property for dairies, production facilities, farms, homes, and similar locations. During the period covered by the audit, Petitioner also leased a gravel pit [Redacted], Idaho, where gravel was produced for resale to the public. The Bureau conducted a comprehensive audit of Petitioner's business for the purpose of determining sales tax and use tax law compliance. The Bureau's examination identified errors in nontaxed sales, sales tax collected but not remitted, fixed asset additions, ordinary purchases, and gravel

removed from Petitioner's resale inventory for use in real property improvements. The Bureau also found that Petitioner made sales of gravel without separately stating the product price and delivery charges; Petitioner's records indicate sales tax was collected on the entire transaction.

Petitioner does not dispute the Bureau's findings relative to the sales tax collected but not remitted, fixed asset additions, ordinary purchases, and gravel removed from inventory for use in real property improvements. However, Petitioner contends it properly collected ST-101 exemption forms for the nontaxed sales, and believes some allowance should be made for sales tax charged on the delivery of gravel to customers to offset the amount due as shown on the Notice. Prior to the informal hearing, Petitioner provided additional information regarding the nontaxed sales; the Bureau reviewed this information, and removed the nontaxed sales from the Notice. The Commission approves of these adjustments. The sole remaining protested issue is the Bureau's denial of any offset for the sales tax Petitioner collected on the delivery of gravel to its customers.

Petitioner's Protest

Petitioner acknowledges it erroneously charged its customers sales tax on deliveries of gravel made during the audit period. The invoices in question indicate a single price for each job; gravel cost and delivery charges are not separately stated. Petitioner does not dispute that delivery charges were not separately stated. To correct this situation, Petitioner believes the amount of sales tax charged on these deliveries should be refunded by Petitioner to its customers; Petitioner would then receive a credit against the amount of sales tax collected but not remitted during the audit period equal to the tax refunded to its customers. During the audit, Petitioner reviewed its deliveries and calculated a breakdown of product cost and freight charges based upon the number of loads necessary to complete the delivery, the number of hours necessary to

complete each load, and an hourly rate for transportation. The Bureau disagreed with the delivery charges presented by Petitioner, asserting Petitioner's calculation method resulted in an excessive amount of delivery charges relative to the total of each invoice. Petitioner believes its calculations should be accepted as a matter of fairness.

Relevant Tax Code and Analysis

Idaho Code § 63-3613(b)(7) provides "The term "sales price" does not include any of the following...Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property..."

IDAPA 35.01.02.061.02 states "Regardless of other provisions of this rule, transportation and handling charges which are not separately stated are included in the sale price subject to tax."

Petitioner did not provide any evidence of a formal price list or set delivery charge for purchases where the product was delivered by Petitioner. According to Petitioner, each haul job was negotiated individually, and the price charged for hauled gravel was not necessarily the same as the price paid for similar gravel at the pit. No documentation of these prices was made. Petitioner explained it was economically feasible to offer discounts on gravel purchased in large quantities, or by customers who could also provide construction work to Petitioner. Petitioner calculated its proposed adjustment for freight charges by reviewing approximately eighty percent (80%) of the questioned invoices and estimating the number of hours necessary to deliver each load. The hours were then multiplied by \$125, a rate based upon Petitioner's survey of two other companies in the area which offer gravel delivery services.

The Commission agrees Petitioner provided delivery of tangible personal property, and that such services are not typically subject to sales tax per Idaho Code § 63-3613(b)(7) and IDAPA 35.01.02.061.06. The Commission also finds it plausible that Petitioner negotiated different prices for gravel and delivery for certain customers. However, in this matter the Commission found Petitioner failed to maintain and/or provide business records adequate to permit any adjustment for nontaxable delivery charges. The delivery locations, types of trucks used, and travel time were not documented on the original invoices or any other records provided to the Bureau; rather, this information was handwritten upon each invoice at a later date, in some cases years after the delivery occurred.

Every retailer within the state of Idaho is required to keep records sufficient for the Commission to determine the amount of sales tax and use tax for which the retailer is liable. IDAPA 35.01.02.111.01. Petitioner did not provide any written contracts, signed by customers, indicating separate prices for gravel and delivery. Petitioner did not provide any documentation of the trips made to deliver gravel to customers, such as trip sheets, bills of lading, or delivery receipts. Without documentation, the Commission cannot establish that the allowance for delivery charges, as proposed by Petitioner, is in accordance with Idaho Code § 63-3613(b)(7) and IDAPA 35.01.02.061.06. To be excluded from the sales price, Petitioner must provide evidence the transportation charges were separately stated.

Conclusion

On appeal, a deficiency determination issued by the Tax Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010); *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The Commission

requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission will uphold the Notice as modified.

Absent information to the contrary, the Commission finds the Notice, as modified by the Bureau, to be a reasonably accurate representation of Petitioner's sales tax and use tax liability for the period March 1, 2012, through February 28, 2015.

The Bureau added interest and penalty to the sales tax and use 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 June 30, 2017, 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 May 26, 2016, is hereby MODIFIED, and as so modified is APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$32,221	\$1,611	\$4,438	\$38,270
Payment effective May 27, 2016			(\$6,146)
Balance Due			<u>\$32,124</u>

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

An explanation of Petitioner's right to appeal is included with this decision.

DATED this _____ day of _____, 2017.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2017 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.
