

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 0-437-309-440
)	
)	
_____ Petitioner.)	DECISION

On August 14, 2015, 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 January 1, 2009 through December 31, 2014, in the total amount of \$33,219.

On October 16, 2015, Petitioner filed a timely appeal and petition for redetermination of the Notice. Petitioner did not respond to hearing rights letters sent by the Commission on November 18, 2015, and January 4, 2016. Petitioner has ceased communications and provided nothing further for the Commission to consider. The Commission, having reviewed the audit file, hereby upholds the audit findings for the reasons detailed below.

Background and Audit Findings

Petitioner operates a retail [Redacted] customers. The Bureau conducted a comprehensive audit of Petitioner's business for the purpose of determining sales and use tax law compliance.

The Bureau asserted Petitioner under-reported taxable sales. According to the Bureau, Petitioner only provided business records for 2011 and 2012. These records documented that Petitioner regularly removed cash from the register to purchase inventory and supplies, and in some cases to cover payroll and back taxes. These expenses, along with other unknown adjustments, were deducted from gross sales prior to Petitioner reporting taxable sales on her monthly sales tax returns.

The Bureau compared the taxable sales reported on Petitioner's sales tax returns with the sales reported on Petitioner's income tax returns for the audit period, and found the taxable sales reported on Petitioner's sales tax returns to be substantially lower. Petitioner provided limited business records during the audit; the amount the Bureau held subject to sales tax for the period covered by audit is the difference between the taxable sales reported on Petitioner's sales tax returns and the sales reported on Petitioner's income tax returns.

Petitioner's Protest

Petitioner submitted a hand-written, 10-page letter providing an overview of her personal life and a history of her business operations. Petitioner acknowledges she made constant mistakes when running the cash register, but contends the liability shown on the Notice will put her out of business.

Relevant Tax Code

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 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

Petitioner, as an Idaho retailer, had 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. Petitioner has not disputed that her sales were taxable, nor has it disputed that she collected tax from customers. There is insufficient evidence to prove that Petitioner remitted all the tax collected to the State of Idaho.

Petitioner raised no factual or legal basis for her protest. Pursuant to Idaho Code § 63-3624, every seller and retailer in Idaho shall keep records, receipts, invoices and other pertinent papers for a period of not less than four years, and provide these documents to the Commission upon request. In this case, Petitioner either did not maintain required business records, did not provide such records to the Commission, or both.

On appeal, a deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Tax Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *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.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s sales tax and use tax liability for the period January 1, 2009, through December 31, 2014.

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 November 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 August 14, 2015, is hereby 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>
\$27,849	\$1,392	\$6,191	<u>\$35,432</u>

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

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

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.
