

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 0-497-911-808
)
 Petitioner.) DECISION
)

On October 27, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on May 4, 2017. The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing, and hereby issues its decision upholding the modified Notice.

Petitioner is a [Redacted] contractor who provides installation, maintenance, and repair services to residential and commercial customers. The Bureau conducted a comprehensive audit to determine Petitioner's compliance with sales tax and use tax law. The modified Notice prepared by the Bureau accounts for two issues, questioned purchases and untaxed sales. Petitioner concurs with the portion of the Notice attributed to questioned purchases. However, Petitioner disagrees with the untaxed sales discovered during the audit.

Petitioner's Protest

Petitioner states that it maintains the [Redacted] systems it installs in customers' [Redacted] systems while performing routine maintenance. The services performed by Petitioner include changing the air filters on the [Redacted]. Petitioner paid sales tax on the filters when they were purchased, and contends it is "installing" the filters into real property; therefore, no tax should be charged to its customers. Petitioner contends that in some cases, the customers provided their own filters.

Relevant Tax Code and Analysis

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies. Idaho Code § 63-3619.

IDAPA 35.01.02.012.01b provides that contractors improving real property do not charge sales tax to their customers unless they make a sale of materials only, without installation. A contractor or repairman who affixes or installs the personal property into real property is the consumer of tangible personal property regardless of the type of contract entered into. IDAPA 35.01.02.012.02e. Petitioner cited these provisions in its protest, asserting that the air filters are tangible personal property installed by Petitioner's employees into the [Redacted] system, which is an improvement to real property; therefore, Petitioner is the consumer of the air filters. Petitioner paid sales tax on the purchase of the air filters in accordance with this belief.

The air filters in question are designed to be replaced easily, without any special tools or knowledge. While an [Redacted] system typically lasts many years, the air filters are disposable and require regular replacement. The air filter is a severable component from the [Redacted] system incorporated into real property.

If a contract includes both retail sales of personal property and improvements to real property, the contractor-retailer must collect sales tax on the retail portion of the contract. IDAPA 35.01.02.014.07. The Commission finds the air filters are personal property sold by Petitioner as part of the service contract, rather than an improvement to real property, and Petitioner should have collected sales tax from its customers on the sale of the air filters.

Conclusion

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 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 June 1, 2009, through June 30, 2016.

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 October 25, 2016, 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 and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$452	\$0	\$45	<u>\$497</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.
