

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 0-732-860-416
)
 Petitioner.) DECISION
)

On November 17, 2015, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on November 17, 2016. Present at the informal hearing was Commissioner [Redacted] , Deputy Attorney General [Redacted] , and Tax Appeals Specialist [Redacted] .

Background & Audit Findings

Petitioner protested the Notice, asserting that the Bureau refused to allow credit for exempt transactions within the audit period that it asserts should have been allowed to offset the Notice.

Protest Analysis

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. Idaho Code §§ 63-3619. In this case, Petitioner asserts that it has erroneously paid tax on transactions that qualify for exemption. Idaho Code §§ 63-3626(a) allows for a refund of tax that has been erroneously collected. These transactions are addressed separately in the following analysis:

[Redacted] *Supplies - Resale*

During the audit period, Petitioner owned and operated [Redacted] programs in the state of Idaho that were established as part of a [Redacted] (HCSA 1980.) As a part of the 1980 settlement agreement Petitioner agreed to provide, operate, and maintain [Redacted] facilities, as necessary in order to mitigate the [Redacted] losses caused by or associated with the construction and operation of the [Redacted]. The agreement allowed Petitioner an option to either use its own resources and personnel to meet these obligations or to hire a subcontractor.

Petitioner chose to contract with the [Redacted] (Contractor) to meet these obligations. According to the contract between the two parties, Petitioner selects a supplier for the purchase and delivery of the [Redacted] supplies (supplies) used in the daily operations of the [Redacted] and the Contractor places the orders in the necessary quantities.

During the audit period, Petitioner asserts that it has erroneously paid sales tax on the acquisition of the supplies. Petitioner posits that it essentially “resells” the supplies to the Contractor who then uses the supplies at a facility owned by Petitioner. Petitioner asserts that in exchange for the supplies, it receives water rights as consideration instead of money or other cash equivalents.

The Bureau held that the provision of the supplies to a Contractor hired by Petitioner to operate the [Redacted] that Petitioner agreed to fund as a result of a settlement agreement does not constitute a sale and as a result held that Petitioner had appropriately paid sales tax on the supplies.

A reseller of goods may purchase those goods exempt from tax, because sales for resale are not retail sales subject to tax. Idaho Code § 63-3609. The Commission agrees with the Bureau that the provision of the supplies in this case does not constitute a sale. Idaho Code § 63-3612(1) defines a sale as the “transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration.” Providing supplies for a program Petitioner agreed to fund as a settlement in order to mitigate the [Redacted] losses caused by or associated with the construction and operation of the [Redacted] does not constitute a sale. The purchase of the supplies is not a purchase for resale; therefore, Petitioner appropriately paid tax on the supplies.

[Redacted] *Supplies – Production Exemption*

Petitioner made an alternate argument that the supplies should qualify for exemption under Idaho Code § 63-3622D, commonly known as the “production exemption.” This exemption excludes tax on the sale, purchase, or use of items primarily and directly used in a production process. Petitioner references IDAPA 35.01.02.083.01 which states that “[f]arming includes custom farming and the operation of a farm or ranch, and includes stock, dairy, poultry, fish, fur, fruit and truck farms, ranches, ranges, and orchards operated with the intention of making a gain or profit.” Petitioner posits that the [Redacted] are being raised or produced with the intention of making a gain or profit, therefore the supplies to feed the [Redacted] should qualify for the exemption. According to Petitioner, the process is as follows; the supplies are used to raise

and grow [Redacted] are then released into the wild, [Redacted] purchase licenses to [Redacted] the [Redacted] that have been released and the licensing funds the [Redacted] resulting in a monetary and environmental gain from operating the hatchery.

[Redacted]

While the Commission finds this argument creative, it does not agree that supplies in this case qualify for the production exemption. IDAPA 35.01.02.079.02 specifies that “[t]he production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail.” In this case, Petitioner has not demonstrated that it is raising [Redacted] that are ultimately going to be sold at retail. Petitioner is meeting its own obligations it agreed to in a settlement

[Redacted] *devices*

During the audit period, Petitioner offered a program to its [Redacted] customers, called the [Redacted] Program. [Redacted] customers enrolled in this program have a [Redacted] device attached to the [Redacted] that controls the power to the [Redacted]. This voluntary program gives [Redacted] the authority to [Redacted]

the [Redacted] . In the event that the [Redacted] wants to override the scheduled “turn off,” the [Redacted] can remotely turn the [Redacted] back on. On average, the [Redacted] that is enrolled in the program receives [Redacted] a credit.

Petitioner asserts that during the audit period, it paid sales tax erroneously on the purchase of the [Redacted] used as a part of this program. Petitioner maintains that the [Redacted] is sold to the customer who then uses it in farming and agricultural [Redacted]. Petitioner asserted that these devices qualify for the agricultural [Redacted] exemption.

The Bureau disagreed with Petitioner and asserted that the [Redacted] devices are being used to regulate [Redacted] demands and are not used for agricultural production purposes. The Bureau held that Petitioner appropriately paid sales tax on the purchase of the [Redacted] devices.

Idaho Code § 63-3622W exempts “all sales of irrigation equipment and supplies to be used for agricultural production purposes, whether or not such equipment and supplies are to become a part of real estate and whether or not installed by the farmer, a contractor or subcontractor.”

The Commission agrees with the Bureau that the [Redacted] devices are not being used for agricultural production purposes and therefore do not qualify for exemption.

[Redacted] – *Statute of Limitations*

During the audit period, Petitioner asserts that it erroneously paid sales tax on the purchase of equipment that qualifies for the [Redacted], a rebate that contained a sunset clause of July 1, 2011. According to a list provided by Petitioner in 2015, the purchases in question were all made prior to the sunset of the [Redacted] .

The Bureau held that the claim for the [Redacted] was submitted well beyond the statute of limitations and denied the claim.

Petitioner protested the Bureau's refusal to allow it to include the claim for the [Redacted], asserting that it agreed in writing to extend the statute of limitations through December 31, 2015, and asserts that this should extend to the rebate for the purchases in question. Petitioner claims that it confirmed with an employee of the Commission that the [Redacted] was applicable during the audit period to any qualified purchases if the property was purchased while the rebate was still in place.

The Commission disagrees with Petitioner's assertion that it erroneously paid sales tax or use tax on the purchase of equipment that it asserts qualifies for the [Redacted]. The payment of sales tax or use tax is one of the requirements that must be met to qualify for the rebate. Idaho Code § 63-3622QQ(3)

There is a difference between a refund of sales tax for which the tax was erroneously paid versus a refund of sales tax because the purchase or use of that equipment qualified for a rebate. Both result in a refund of tax that has been paid by a taxpayer, but the rebate is used as a tool to encourage certain behavior. In this case, it would appear that rebate was created to encourage a business that intends to produce [Redacted] to choose Idaho as its location.

The agreed upon extension (statute waiver) may extend the unexpired statute of limitations on assessment or collection of taxes and on any refunds of taxes that have been overpaid during the audit period depending on the circumstances. The question at hand is whether the waiver also extends the statute of limitations for the [Redacted].

Idaho Code § 63-3633 requires that the taxes imposed in the sales tax act be assessed within three (3) years after the due date of the return or the date the return was filed, whichever is the later. Idaho Code § 63-3626 states that no refund of taxes that have been overpaid will be allowed after three (3) years from the time the payment was made to the state tax commission. Both Idaho

Code §§ 63-3633 and 63-3626 provide for an extension of time to be made where both the State Tax Commission and the taxpayer have consented in writing. In this case, the Bureau and Petitioner consented in writing to extend through December 31, 2015.

The language in the written agreement stipulates that “[t]he Idaho State Tax Commission and the business named above agree that the expiration of any unexpired statutes of limitations on assessment or collection of taxes and on any refunds of taxes relating to the audit period identified below shall be extended through the expiration date indicated below. The State Tax Commission may issue a Notice of Deficiency Determination or the business named above may file a written claim for refund relating to the audit period on or before the extended date. As used in this extension, “taxes” includes any related interest, penalty, or additional amount provided by law.”

The waiver that Petitioner signed for the audit provides the extension of time because it is allowed for in statute. Both Idaho Code §§ 63-3633 and 63-3626 give a statute of limitations and instructions as to how one can extend the statute of limitations.

The [Redacted] rebate has its own statute of limitations, but contains no language that would allow for an extension of time. Idaho Code § 63-3622QQ (4) states that “A claim for rebate under this section must be filed on or before the last day of the third calendar year following the year in which the taxes sought to be rebated were paid or the right to the rebate is lost.”

In this case, the taxes Petitioner seeks a rebate for were paid in 2009, 2010, and 2011. The following table explains what percentage of the total request fell in each year and the date that Petitioner lost the right to the rebate:

Year Purchased	% of Request	Out of Statute
2009	17%	12/31/12
2010	81%	12/31/13
2011	2%	12/31/14

[Redacted]

[Redacted]

The meaning of a statute is a matter of law. *St. Alphonsus Reg'l Med. Ctr., Inc. v. Bd. Of County Comm'rs of Ada County*, 146 Idaho 51, 53, 190 P.3d 870, 872 (2008). When interpreting a statute, courts begin with the literal words of the statute. *Boyd-Davis v. Macomber Law, PLLC*, No. 41523, 2015 WL 301990, at *3 (Idaho Jan. 23, 2015) (citing *Williams v. Blue Cross of Idaho*, 151 Idaho 515, 521, 260 P.3d 1186, 1192 (2011)). “[T]hose words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.” *In re Guardianship of Doe*, 157 Idaho 750, 339 P.3d 1154, 1160 (2014) (quoting *A & B Irr. Dist. v. Idaho Dep't of Water Res.*, 154 Idaho 652, 654, 301 P.3d 1270, 1272 (2012)).

If statutory language is clear and unambiguous, the courts need merely apply the statute without engaging in any statutory construction. *Barbee v. WMA Sec., Inc.*, 143 Idaho 391, 394, 146 P.3d 657, 660 (2006). The court must merely apply the statute as written. *Sumpter v. Holland Realty, Inc.*, 140 Idaho 349, 352, 93 P.3d 680, 683 (2004). The court must give effect to a statute wherever it is possible to do so, and must keep within the terms of the language used. *State v. Hahn*, 92 Idaho 265, 268, 441 P.2d 714, 717 (1968). The courts have the duty not to deprive a statutory provision of its meaning. *A & B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 424, 958 P.2d 568, 581 (1997). Courts are to follow the plain meaning and neither add to the statute nor take away from it by judicial construction, as it is for the legislature, “not the judiciary, to evaluate the wisdom or efficacy of the statutory scheme.” *Rule Sales and Service, Inc. v. U.S. Bank Nat. Ass’n*, 133 Idaho 669, 672-673, 991 P.2d 857, 860-861 (Ct. App. 1999) (citations omitted). Even more, “[i]t is well understood that equitable principles cannot supersede the positive enactments of the legislature.” *Davis v. Idaho Dept. of Health and Welfare*, 130 Idaho 469, 471, 943 P.2d 59, 61 (Ct. App. 1997).

Finally, the Bureau expressed concerns that the list of purchases provided by Petitioner may contain items that fall under the exclusion to the rebate. Idaho Code § 63-3622QQ(2)(c) provides a listing of exclusions to the definition of qualifying machinery and equipment.

The Commission agrees that Petitioner’s list does potentially contain items that fall within the exclusions however does not feel that this needs to be addressed because no claim for the rebate was made within the statute of limitations and any machinery and equipment allowed by the statutory language of the exemption excludes such property if owned by Petitioner.

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 November 1, 2009, through October 31, 2012.

The Bureau added interest to the sales tax and use tax deficiency. The Commission reviewed that addition and found it to be appropriate per Idaho Code §§ 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated September 18, 2015, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

The Notice of Deficiency Determination has been paid in full by Petitioner, therefore, no DEMAND for payment is made or necessary.

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.
