

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 1-088-008-192
)
 Petitioner.) DECISION
)

On May 18, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on March 21, 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 Notice.

Petitioner commenced business in 2009 as a vehicle repair shop. Petitioner transitioned into a vehicle and equipment dealer; only a few repairs were completed in 2011, and no repairs were performed in 2012 and subsequent years. Petitioner's records and the local classified ads indicate a wide variety of vehicles and equipment were sold during the audit period, including semi-trucks and trailers, dump trucks, passenger vehicles, vessels, motorcycles, ATVs, UTVs, man lifts, sweepers, mowers, and air compressors.

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Petitioner's Protest

Petitioner's protest is brief. Petitioner states it has additional information related to the audit, and disagrees with "some of the audit findings." Petitioner has not provided any additional documentation since its protest. During the informal hearing, Petitioner clarified that its protest relates to vehicles sold to out-of-state customers, who did not provide a valid ST-104-MV, Sales Tax Exemption Certificate – Vehicle/Vessel. The Bureau held these sales as taxable if Petitioner could not produce a valid 104-MV.

Relevant Tax Code and Analysis

In Idaho, the sale, purchase, and use of tangible personal property is taxable unless an exemption applies. Idaho-registered retailers doing business in this state have an obligation to collect sales tax on sales that do not qualify for an exemption. Idaho Code §§ 63-3610, 63-3611, and 63-3619.

A retailer can make sales of motor vehicles and vessels tax exempt if the buyer is a non-resident and complies with certain conditions. Idaho Code § 63-3622R. An exempt sale under these circumstances must be documented by a Commission certificate, Form ST-104-MV. When this form is filled out by the buyer for a valid exemption and is kept by the retailer, the retailer has no obligation to collect tax. IDAPA 35.01.02.101.05, 35.01.02.102.06.c, and 35.01.02.107.10.b.

IDAPA 35.01.02.107.10 provides in pertinent part:

10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.

a. Sales of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles, off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when:

i. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state

directly to a point outside this state; and

ii. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve month period.

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104-MV.

IDAPA 35.01.02.107.10

Petitioner believed it had sufficient documentation that validated its buyers' non-residency claims, including an out-of-state address for each buyer. There were no 104-MVs on file for any of the sales transactions the Bureau held as taxable. The Commission concludes that Petitioner did not fulfill the requirements for documenting exemptions. A signed claim by the buyer stating that he or she is not an Idaho resident is the required evidence in this case, and it does not exist.

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) (citing *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). Petitioner must 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 August 1, 2011, through July 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 March 16, 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, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$47,144	\$6,830	\$8,101	\$62,075
Less Payment Effective 5-18-2016:			(\$8,000)
Amount Due:			<u>\$54,075</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.
