

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 1-357-991-936
)	
)	
_____ Petitioner.)	DECISION

On April 20, 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 August 1, 2013, through March 31, 2015, in the total amount of \$8,984.

On June 21, 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 12, 2016. Present at the informal hearing was Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Appeals Specialist [Redacted].

The Commission, having reviewed the audit file and considered the information provided at the hearing, hereby upholds the audit findings for the reasons detailed below.

Background and Audit Findings

Petitioner operates a therapeutic [Redacted] business with two private rooms. In each room is a soundproof pod where customers [Redacted] salt water at body temperature, plus a shower and changing area. Customers may purchase either a single [Redacted] session or a monthly membership.

The Bureau conducted a routine, managed audit of Petitioner's business for the purpose of determining compliance with Idaho sales and use tax law. The resulting Notice included amounts due for sales tax on the sale of [Redacted] sessions, which the Bureau held to be a form of recreation,

and use tax on fixed asset purchases. Petitioner concurs with the amount due for use tax, but disagrees that the [Redacted] sessions are taxable.

Petitioner's Protest

Petitioner contends the [Redacted] sessions do not constitute a retail sale of recreation, but rather are fee-based, therapeutic services that do not include any type of rental or lease of property. Petitioner submitted copies of studies regarding [Redacted], in which the participants are referred to as "patients," as substantiation that the service provided by Petitioner offers a health benefit. Petitioner stated some of its customers are referrals from health care providers.

Relevant Tax Code and Analysis

The session and membership fees collected by Petitioner are paid solely for access to the [Redacted] pods; any service by Petitioner, such as demonstration of the equipment or monitoring clients while in the pod for safety purposes, is incidental to the rental of the pod. In Idaho, a sale includes the use of tangible personal property or facilities for recreation when a consideration is transferred. Idaho Code § 63-3612(2)(f). Charges for the use or privilege of using tangible personal property or facilities for recreation constitute a retail sale. IDAPA 35.02.01.011.01(e). Petitioner disagrees that its [Redacted] sessions are recreational in nature, citing the therapeutic benefits enjoyed by those who [Redacted] However, the Commission agrees with the Bureau that the [Redacted] sessions are one form of recreation.

Petitioner raised the issue of customers obtaining referrals from health professionals for [Redacted] sessions. An exemption from sales tax and use tax exists for prescription items when administered or distributed by a practitioner, or when purchased by or on behalf of an individual under a prescription or work order of a practitioner. Idaho Code § 63-3622N. Petitioner has not submitted evidence to indicate any of its customers were prescribed [Redacted] sessions by a practitioner

licensed under Title 54, Idaho Code. Petitioner is not a licensed medical practitioner under Idaho law. The Commission finds this exemption does not apply to sales of [Redacted] sessions made by Petitioner.

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 Tax 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 August 1, 2013, through March 31, 2015.

The Bureau added interest and penalty to the sales 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 May 31, 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 April 20, 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>
\$8,292	\$0	\$1,007	<u>\$9,299</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.
