

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

[Redacted]

Petitioner.

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DOCKET NO. 1-559-703-552

DECISION

On January 4, 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 October 1, 2012, through December 31, 2012, in the total amount of \$9,320.

On March 7, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on November 16, 2016. Present at the informal hearing was Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Appeals Specialist [Redacted].

The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing and thereafter and hereby issues its decision to uphold the Notice.

Background and Audit Findings

The Bureau sends out a written request to prime contractors who have been awarded a public works project, requesting that they complete a WH-5 Public Works Contract Report (Report). Idaho Code § 54-1904A requires that the prime contractor respond to the request from the Bureau within thirty (30) days of that request. This request is made both at the beginning of a project and again at the completion. The Report provides information about the work that is being performed and by whom, as well as a list of any suppliers providing materials. Once the Bureau receives the Report, it is reviewed for compliance with Idaho code and rules. In the event that the

general contractor fails to submit the Report, the final payments for the work performed or retainages will be held by the awarding agencies until this has been submitted.

In this case, Petitioner was awarded the Idaho public works contract to build a new 8,400 square foot [Redacted] facility (steel structure/metal roofing), concrete foundations, interior/exterior finishes, parking lot and site improvements for [Redacted] County. In the final Report, Petitioner reported two major suppliers of materials and supplies and asserted that it paid sales tax directly to both. The Bureau requested that Petitioner provide copies of the project invoices for an out of state supplier included on the Report. In response, Petitioner provided the Bureau with a copy of its purchase order for the transaction. The Bureau determined that the purchase order, created by Petitioner, did not substantiate that the out of state supplier collected sales tax. Therefore, the Bureau held the materials purchased subject to use tax due to the lack of documentation.

Petitioner's Protest

Petitioner's protest letter discusses the complications that it had with both the supplier and the awarding agency while performing the contract it had been awarded, but did not clearly pinpoint why it believes that the materials should not be subject to a sales tax or use tax.

Relevant Tax Code and Analysis

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax is not paid to the vendor, the buyer owes a use tax to the state. Payment of use tax extinguishes the sales tax obligation. Idaho Code §§ 63-3612 and 63-3621.

For sales tax and use tax purposes, a contractor improving real property is the consumer of any materials that become part of the realty and owes a sales or use tax on such materials:

All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of

tangible personal property are taxable whether or not such persons intend resale of the improved property.

Idaho Code § 63-3609(a)

Based on the above, if a contractor used materials in the construction of real property, the contractor will owe sales or use tax. The term “use” as utilized here is a specially defined term for purposes of the use tax:

The term “use” includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax....

Idaho Code § 63-3615(b)

In this case there is no question that there were materials incorporated into a real property improvement in the performance of the contract that was awarded to the Petitioner. Petitioner was afforded the opportunity to provide documentation supporting that those materials had been appropriately taxed, but failed to do so.

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); *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The Commission requires Petitioner 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 October 1, 2012, through December 31, 2012.

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 August 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 January 4, 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>
\$7,995	\$400	\$1,376	<u>\$9,771</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.
