

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of

**[Redacted]**

Petitioner.

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) DOCKET NO. 2-021-675-008  
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) DECISION  
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On December 29, 2015, 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, and interest for the period March 1, 2012, through March 31, 2015, in the total amount of \$4,685.

On January 26, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on Tuesday, October 18, 2016. Present at the informal hearing was Commissioner **[Redacted]**, Deputy Attorney General **[Redacted]**, and Tax Appeals Specialist **[Redacted]**. At the informal hearing, Petitioner provided additional documentation for the Bureau to review which resulted in a modification to the Notice.

The Commission being fully advised of the contents of the audit file, as well as information obtained at the hearing and thereafter, hereby issues its decision further modifying the audit findings.

**Background and Audit Findings**

Petitioner specializes in creative design (i.e.

**[Redacted]**

.) The Bureau

conducted a managed audit of Petitioner's business and found errors related to non-taxed sales, ordinary purchases, and fixed asset additions.

Both the Bureau and Petitioner are in agreement with the modified audit findings with the exception of the imposition of sales tax on the sale of **[Redacted]** Sign Packages (Package). The Package provided by Petitioner includes the following elements:

Sign – Petitioner prints a **[Redacted]** notice on vinyl and affixes it to posts that will be put into the ground at the specified location. The sign itself never does become the property of the buyer, instead Petitioner reuses the materials it can and disposes of the rest. Petitioner asserts that the overall cost of the materials to make the sign is minor.

Installation/Removal – Petitioner will put the sign up at the specified location 10 days prior to the **[Redacted]** date in a manner that meets the requirements of the City Planning Department. At the end of the required period Petitioner will return and take down the sign.

Evidence – Petitioner provides evidence that the requirements have been met by providing a notarized affidavit of the posting as well as photos of the sign in that location.

Notification – Petitioner makes the required notification of the posting to the City Planning Department.

Petitioner pays sales tax when purchasing the wood that the signs are affixed to and reuses this material at multiple locations. The sign itself is fabricated using vinyl that Petitioner currently purchases by the roll. The vinyl itself is used predominately for resale so no sales or use tax has been paid on the purchase of the rolls.

The Bureau asserted that what the buyer obtains when purchasing the Package is a sign and that any service provided is incidental to acquisition of the sign itself.

### Petitioner's Protest

Petitioner protested the imposition of sales tax on the sale of the Packages, asserting that the example in IDAPA 35.01.02.036.04 can be read to apply to the **[Redacted]** signs sold by Petitioner:

**04. Road Signs.** Road signs are signs installed alongside or above roads that provide roadway information to users of the road. Examples of road signs include traffic signs such as speed limit signs and stop signs; street signs; recreational area signs; highway signs such as mileage signs and exit signs; and highway exit service information signs. (3-20-14)

**a.** In general, road signs become real property upon installation. Consequently, an installer of road signs acts as a contractor improving real property when performing the installation work. Therefore, a road sign installer is the consumer of all materials used in the installation of the road sign. The installer owes sales or use tax on its use of all sign materials regardless of whether the installer purchased the materials or had the sign materials provided by the sign owner. However, if the sign owner has already paid sales or use tax on its purchase of the sign materials, the installer will not owe any additional use tax. (3-20-14)

**b.** Alternatively, if a road sign is intended to serve a temporary purpose, the road sign does not become real property regardless of the nature of its purpose or how the road sign is affixed to real property. (3-20-14)

**i.** Example 1: A contractor installs a stop sign on behalf of a public transportation department to adjust traffic flow during a period of road construction. The contractor removes the stop sign upon completion of the construction and returns the stop sign to the public transportation department. The stop sign remains tangible personal property while installed. Therefore, the contractor does not owe use tax. (3-20-14)

**ii.** Example 2: A contractor purchases signs used to warn approaching vehicles of a construction project that affects traffic flow such as "Be Prepared to Stop." The contractor maintains an inventory of such signs for use on a variety of projects. The signs only ever serve a temporary purpose for the duration of a project. The contractor does not resell the signs or install the signs on a permanent basis. The purchase of these signs is taxable to the contractor. (3-20-14)

IDAPA 35.01.02.036.04

Petitioner states that **[Redacted]** signs are required by the City and County government, to be temporarily posted or installed alongside a roadway providing information to

the community. Petitioner asserts that as a contractor, it does post, remove, and reuse these materials regularly.

### **Analysis and Conclusion**

The Commission disagrees with the Bureau that what is being provided in the Package is in fact a road sign, which by definition is a sign that provides roadway information to users of the road. The signs in the Package are for the purpose of notifying the public of upcoming **[Redacted]**. There are specific requirements on how notice of a **[Redacted]** should be posted and the Package provided by Petitioner is designed to meet this requirement.

IDAPA 35.01.02.011.02 provides guidance on how to treat a sale that is a mixed transaction of the transfer of tangible personal property and the provision of a service:

**02. Retail Sales of Tangible Personal Property Together with Services.** The sales tax applies to retail sales of tangible personal property. It does not apply to the sale of services except as stated above. However, when a sale of tangible personal property includes incidental services, the tax applies to the total amount charged, including fees for any incidental services except separately stated transportation and installation fees. The fact that the charge for the tangible personal property results mainly from the labor or creativity of its maker does not turn a sale of tangible personal property into a sale of services. The cost of any product includes labor and manufacturing skill. To determine whether a transaction is a retail sale of tangible personal property or a sale of services, the following tests must be applied. (7-1-93)

**a.** To determine whether a transfer of tangible personal property is a taxable retail sale or is merely incidental to a service transaction, the proper test is to determine whether the transaction involves a consequential or inconsequential professional or personal service. If the service rendered is inconsequential, then the entire transaction is taxable. If a consequential service is rendered, then it must be determined whether the transfer of the tangible personal property is an inconsequential part of the transaction. If so, then none of the consideration paid is taxable. (7-1-93)

**b.** To determine whether a mixed transaction qualifies as a sale of services, the object of the transaction must be determined; that is, is the buyer seeking the service itself, or the property produced by the service. (7-1-93)

**c.** When a mixed transaction involves the transfer of tangible personal property and the performance of a service, both of which are consequential elements whose costs may be separately stated, then two (2)

separate transactions exist. The one attributable to the sale of tangible personal property is subject to sales tax while the other is not. (7-1-93)

IDAPA 35.01.02.011.02

The Commission disagrees with the Bureau that the sale of the Package is a retail sale of a sign with no consequential service component to it. Rather the Commission believes that the buyer is paying for Petitioner to ensure that all the requirements associated with notifying the public about the **[Redacted]** have been met, this is the object of the transaction. In this case, the service component is a consequential element. In the event that Petitioner fails to meet any of the requirements associated with notifying the public about the **[Redacted]**, reprinting the sign itself will not correct the error and satisfy the buyer. Each of the requirements must be met in order to satisfy the object of the transaction.

The Commission acknowledges that the sign itself is created in order to meet these requirements, providing both installation and removal of the sign after which Petitioner recycles the materials. The sign itself does not transfer from Petitioner to the Buyer at any point. If there is indeed a transfer of the tangible personal property in this case, the Commission finds that this is an inconsequential part of the transaction.

The sale of a Package is the sale of a service, which would not be subject to sales tax. Petitioner should pay tax on any materials or tangible personal property used to provide the Package. If Petitioner did not pay sales tax when the materials or tangible personal property was purchased, Petitioner has a responsibility to accrue a use tax on its sales and use tax return.

Petitioner did confirm that there were untaxed materials that had been used to provide the Package during the audit period and was able to estimate the total. This estimate was reviewed and found to be reasonable by the Bureau who modified the Notice to include the amounts subject to use tax.

### Conclusion

The Commission modified the Notice prepared by the Bureau for the period March 1, 2012, through March 31, 2015 to remove any transactions where the Package had been held. The Bureau added interest 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, interest updated accordingly. Interest is calculated through June 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 December 29, 2015, is hereby MODIFIED, 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>INTEREST</u>	<u>TOTAL</u>
\$2,615	\$380	<u>\$2,995</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 enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

IDAHO STATE TAX COMMISSION

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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.

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