

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 24726
)	
)	
Petitioner.)	DECISION

On March 12, 2010, 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 July 1, 2007, through July 31, 2009, in the total amount of \$14,927.

On May 10, 2010, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Bureau continued to work with Petitioner on the issues identified during the audit until early 2012. At that time, the file was transferred to the Appeals section for administrative review and resolution of Petitioner's protest. The Commission mailed a hearing rights letter to Petitioner on April 23, 2012. Petitioner responded via email, and indicated he would like to submit additional information, which was received on October 18, 2012. No adjustments were made based upon this submission. The Commission responded on January 3, 2013, and again inquired if Petitioner would like a hearing. Petitioner responded on January 29, 2013, and requested the necessary information to make a settlement offer. The Commission provided the settlement requirements on January 30, 2013, but did not receive any further response from Petitioner.

In an effort to resolve Petitioner's protest, the Commission mailed additional hearing rights letters to Petitioner on July 1, 2016 (returned as undeliverable), July 13, 2016 and,

October 13, 2016. No response was received from Petitioner. The Commission, having reviewed the audit file, hereby upholds the Notice for the reasons detailed below.

Background and Audit Findings

Petitioner operates a business that designs and installs audio/visual systems, including tangible personal property such as TVs, receivers, speaker, tuners, and other equipment. The Bureau conducted an audit of Petitioner's business for the purpose of determining sales and use tax law compliance.

The Bureau reviewed Petitioner's invoices for the period January 1, 2008, through December 31, 2008, and found untaxed sales of tangible personal property, freight-in charges, as well as ordinary purchases subject to use tax. These errors were projected upon the other periods included in the audit and the resulting amounts were held taxable.

Petitioner's Protest and Analysis

Petitioner protested several aspects of the audit as described below:

Projection: Petitioner contends the projection for July 1, 2007, through December 31, 2007, should be calculated based upon one-half of his reported income for the year, as his income tax return was an annual document and the audit period included only one-half the year.

The Bureau's review of Petitioner's business records revealed untaxed sales of taxable personal property. The Idaho Sales Tax is a tax on retail sales, and retail sales include all sales of tangible personal property except for property that will be resold, leased, or rented in the regular course of the buyer's business, IDAPA 35.02.01.011. Petitioner contends that the error projection rate calculated during the audit should only be applied to one-half of his 2007 income, as the audit period commenced July 1, 2007. This premise is not supported by Petitioner's

previous statement to the auditor that during “the first six months of his business there was very little activity”. Initially, the audit period was to begin in August 2006; however, Petitioner stated his business commenced in July 2007. The Bureau found no evidence to the contrary, and adjusted the audit period to align with the start of Petitioner’s business operations. Petitioner did not provide a complete set of business records for 2007 to indicate the exact date he began business operations.

Payment Application: Petitioner agreed with the sales held taxable in 2008, but claimed the Bureau had not properly considered payments made with the sales and use tax returns filed during the year when calculating the audit liability; therefore, the penalty and interest shown on the Notice was overstated.

The Commission found that the Bureau properly credited tax payments made in 2008 against the audit liability. Petitioner submitted a total of \$1,129.56 in payments during 2008. Of this amount, \$935 was credited towards tax due, while the remainder was applied to penalty and interest due for untimely payments.

Untaxed Sales: Petitioner stated that two invoices held taxable during 2009 were for labor only; therefore, not subject to sales tax. Petitioner provided only one invoice to the Commission for review. This invoice provides a description of the charges as “Draft charge for [Redacted] signage.” There is nothing further that would indicate this charge is for labor. Without additional information, the Commission determined the amount shown on the invoice was correctly held as subject to sales tax.

Penalty Authority: Petitioner protested the penalty shown on the Notice, as the relevant statute originates from a portion of Idaho Code devoted to income tax. However, all additions and penalties provided by Sections 63-3046, 63-3075, 63-3076, and 63-3077 of the

Idaho Code are incorporated in the Sales Tax Act, Idaho Code § 63-3635. Therefore, the negligence penalty described in Idaho Code § 63-3046 is applicable to a sales and use tax liability.

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 July 1, 2007, through July 31, 2009.

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 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 March 12, 2010, 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>
\$12,973	\$648	\$4,861	<u>\$18,482</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the 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.
