

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

[Redacted]

Petitioner.

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DOCKET NO. 25048

DECISION

On March 16, 2012, 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 September 1, 2008, through August 31, 2011, in the total amount of \$51,039.

On May 9, 2012, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission mailed hearing rights letters to Petitioner on August 6, 2012; July 1, 2016; and September 14, 2016. No response was received from Petitioner.

For the reasons that follow, the Commission upholds the audit findings.

Background and Audit Findings

Petitioner operates a business that offers commercial [Redacted] services and deliveries including the rental of [Redacted]. The Bureau conducted an audit of Petitioner's business for the purpose of determining sales tax and use tax law compliance. The Bureau's examination identified errors in untaxed sales, fixed asset sales, ordinary purchases, and fixed asset purchases.

After the Notice was issued, Petitioner submitted additional documentation to the Bureau, resulting in a modification of the Notice. The Commission approves of these adjustments.

Petitioner's Protest

Petitioner does not dispute the liability attributed to untaxed sales or fixed asset sales. Petitioner submitted its protest prior to the Notice being issued; the ordinary purchases discussed in Petitioner's protest were removed from the audit by the Bureau with the exception of hangers. Petitioner contends that certain fixed assets and hangers held taxable in the audit qualify for the production exemption, as they are engaged in processing, primarily devoted to producing a product for resale, and they own the goods being processed. Petitioner states the equipment and hangers under protest are utilized solely in its rental [Redacted] business, and are not part of its [Redacted] operations.

Relevant Tax Code and Analysis

Purchases of tangible personal property in Idaho are subject to tax unless an exemption applies. Idaho Code § 63-3619. Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. Payment of sales tax to a vendor extinguishes the use tax liability. Therefore, purchases subject to use tax are only taxable when the purchaser buys goods without paying tax to the seller at the time of sale.

There is an exemption for the purchase of tangible personal property used in the production of items that will be sold at retail. Idaho Code § 63-3622D. In this case, the "sale" made by Petitioner is the rental of tangible personal property owned by Petitioner. Petitioner does not manufacture, fabricate, or assemble any of the goods held in its rental inventory; the [Redacted] goods being rented are purchased by Petitioner as a finished product, ready for use. At no time is Petitioner creating a new product to be purchased by its customers. The hangers purchased by Petitioner for use in its rental operation do not qualify for the production exemption, as they are purchased fully formed and ready for use. Idaho Code §63-3622D(g)

provides that tangible personal property not used for manufacturing, processing, or fabricating tangible personal property for resale will not qualify for the production exemption. The fixed asset purchases held taxable by the Bureau are used to maintain Petitioner's rental inventory, rather than produce tangible personal property held for resale.

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 September 1, 2008, through August 31, 2011.

The Bureau added interest to the sales tax and use tax deficiency. The Commission reviewed this addition and found it to be appropriate per Idaho Code § 63-3045.

THEREFORE, the modified Notice of Deficiency Determination dated March 16, 2012, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

Petitioner has paid the taxes and interest shown on the Notice in full; therefore, no demand for payment is made or necessary.

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.
