

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 38994
)
)
 Petitioner.) DECISION
)

Petitioner has ceased communications and provided nothing further for the Commission to consider. The Commission, having reviewed the audit file, hereby upholds the audit findings for

the reasons detailed below.

Background and Audit Findings

Petitioner is a [Redacted] vendor based in California. During the audit period, Petitioner owned vending machines located in two shopping centers within Idaho. Petitioner utilized an Idaho-based independent contractor to maintain the machines. Petitioner lost its contract with the shopping centers in October 2012; once the machines were removed, Petitioner no longer maintained a presence in Idaho. Petitioner ceased operations prior to the conclusion of the audit.

The Bureau conducted an audit of Petitioner's business for the purpose of determining sales and use tax law compliance. The Bureau asserted Petitioner, which has never held an Idaho seller's permit, made sales subject to tax in calendar years 2008 through 2012. Petitioner provided limited business records during the audit. The amount the Bureau held subject to sales tax is based upon an analysis of the documents provided by Petitioner and income tax returns filed by Petitioner in Idaho.

Petitioner's Protest

Petitioner contends it was never informed by the Commission that a seller's permit was necessary; food was not subject to sales tax in California, and Petitioner was unaware of Idaho's sales tax laws. Petitioner also states the sales figures used by the Bureau to calculate the tax due during the audit period were inaccurate, and updated records of sales during the audit period would be submitted at a later date. No further documentation was received.

Relevant Tax Code and Analysis

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies. Idaho Code § 63-3619. IDAPA 35.01.02.058.01 specifies that the sale of tangible personal

property through a vending machine is a taxable transaction, and Idaho Code § 63-3619(e) provides in pertinent part:

Tangible personal property when sold at retail for more than eleven cents (11¢) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen percent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines.

The calculation of sales tax due on goods sold through vending machines is described in IDAPA 35.01.02.058.02, as follows:

Amount Subject to Tax. Pursuant to Section 63-3613, Idaho Code, sales of items through a vending machine for amounts from twelve cents (\$0.12) through one dollar (\$1) are taxable at one hundred seventeen percent (117%) of the vendor's acquisition cost of the items. Items sold for more than one dollar (\$1) are taxable on the retail sales price. Sales of items for a price of eleven cents (\$0.11) or less are exempt from tax pursuant to Section 63-3622L, Idaho Code. (Emphasis added.)

Analysis and Conclusion

Petitioner, as an Idaho retailer, had a responsibility to collect and remit sales tax on all sales subject to the Sales Tax Act. At issue is the amount of tax due on sales made to Idaho customers. Given the type of goods sold by Petitioner, and absent information to the contrary, the Bureau presumed the sales price of each item sold by Petitioner was between .11¢ and \$1.00. The Bureau calculated the tax due, as shown on the Notice, by multiplying Petitioner's cost of goods sold by 117 percent, as required by Idaho Code § 63-3619(e) and IDAPA 35.01.02.058.02, then by 6 percent.

The Commission agrees that sales made during the audit period to Idaho consumers are subject to sales tax. Petitioner, as an Idaho retailer, has a responsibility to collect and remit sales tax on all sales subject to the Sales Tax Act. Petitioner's cost of goods sold was documented by income tax returns filed in Idaho for calendar years 2008-2010, and records provided by Petitioner to the Bureau for calendar years 2011 and 2012. Petitioner stated in its appeal that the cost of

goods sold amounts reported on its income tax returns were overstated, and that additional documentation regarding its sales in Idaho would be submitted; however, Petitioner provided no further information to either the Bureau or the Commission. The Commission finds the documentation utilized by the Bureau as a sufficient basis upon which to calculate Petitioner's sales tax liability.

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) (citing *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The 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 the Petitioner's sales tax and use tax liability for the period January 1, 2008, 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 November 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 October 2, 2013, 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>
\$3,485	\$174	\$1,067	<u>\$4,726</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.

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.
