

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-134-567-936
[Redacted]	)	
	)	
Petitioner.	)	DECISION
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The Idaho State Tax Commission (Commission) reviewed the case of [Redacted] (Petitioner), and upholds the Notice of Deficiency Determination (Notice) dated June 2, 2017. This means that Petitioner is responsible for sales tax, use tax, penalty, and interest for the period April 1, 2012, through March 31, 2015, in the **total amount of \$61,925**.

**Background and Audit Findings**

Petitioner is a contractor and retailer located in [Redacted] Idaho. Petitioner’s primary business activity involves supplying and installing rock and topsoil for customers. Petitioner also crushed and processed rock for sale during the audit period.

On July 5, 2013, a structure fire destroyed Petitioner’s office and shop including the majority of its invoices and accounting records up to that point. In 2014, Petitioner replaced its office manager-bookkeeper because of illness, which caused further disruption in the business operations and accounting practices.

The Sales Tax Audit Bureau (Bureau) conducted a routine comprehensive audit of Petitioner’s business for the purpose of determining compliance with Idaho sales tax and use tax laws. Petitioner provided the Bureau with a QuickBooks backup file containing transactional data for the entire audit period. The Bureau was able to reproduce sales reports and sales invoices from this data. Therefore, the loss of paper sales records did not materially affect the sales examination.

The Bureau found Petitioner did not charge sales tax correctly on some sales transactions. Petitioner erred by calculating a royalty value for pit run and topsoil instead of computing and

collecting sales tax from customers on the retail sales price. The Bureau also found Petitioner did not collect sales tax on some sales of tangible personal property and did not provide exemption certificates for these sales. The Bureau found Petitioner also crushed and processed rock for sale, and did not collect sales tax or provide an exemption certificate. As a result, Petitioner's total sales tax liability for the audit period was \$17,613.

The Bureau also examined Petitioner's contract jobs. Petitioner supplied and installed rock, topsoil, and other miscellaneous goods into real property. As a contractor, Petitioner is responsible for the payment of sales tax or use tax on the acquisition cost or fair market value of the materials used to perform these jobs. Petitioner collected and remitted sales tax from its customers on the retail price of the materials installed, instead of properly remitting the use tax due on the materials it consumed. As a result of this review, the Bureau held Petitioner subject to \$973 in use tax on these jobs.

The Bureau's review of Petitioner's sales records showed Petitioner performed road construction and maintenance jobs for [Redacted] Petitioner crushed and applied rock for several of the [Redacted] jobs. In some instances, Petitioner appeared to use [Redacted] stockpiled material to complete the job. The Bureau used a royalty value of \$1 per yard to determine the fair market value of rock consumed for jobs where Petitioner crushed and applied the rock as part of the same job. The Bureau used a value of \$7.20 per yard to determine the fair market value of the rock used for jobs where it appeared Petitioner used [Redacted] stockpiled rock. The Bureau based the stockpiled value on the crushed rock sales that were previously charged to [Redacted] The Bureau determined Petitioner was subject to use tax for these jobs in the amount of \$5,407.

The Bureau considered the lack of paper records when formulating the audit approach for the

pre-fire period's examination of purchases, and had several discussions with Petitioner to determine an appropriate examination method. Petitioner agreed with the Bureau's proposed approach before the examination began.

Since Petitioner provided QuickBooks data, the Bureau generated general ledger transaction detail reports to establish purchase transactions that occurred prior to and after the fire. Purchase transactions which would not be examined in the ordinary course of an audit (professional services or fees, utilities, operated equipment rentals, etc.) were filtered out from the data.

The Bureau examined the remaining transactional data obtained from the reports and separated the data into an examination for ordinary purchases and an examination for extraordinary purchases. For each examination, the Bureau identified the pre-fire and post-fire transactions separately. The Bureau found 111 of 512 post-fire period invoices were missing. The Bureau estimated the pre-fire period liability using the error rate determined by the Bureau's review of Petitioner's post-fire period transactions. The Bureau applied the error rate to 362 questioned ordinary purchases and 24 extraordinary purchases found in the pre-fire periods. As a result, the pre-fire period ordinary and extraordinary purchase liability totaled \$4,578, and the post-fire purchase liability totaled \$23,189.

### **Petitioner's Protest**

Petitioner contends the audit findings are incorrect because the fire destroyed its records, and the records could not be reviewed. Petitioner also considers the tax due to be a financial hardship and is struggling to keep the company operating.

### **Relevant Tax Code and Analysis**

The sale of tangible personal property is subject to sales tax, and the storage, use, or other consumption in this state of tangible personal property is subject to use tax, unless an exemption

applies to either, sections 63-3619 and 3621, Idaho Code.

Petitioner contends the sales and use tax audit findings are inaccurate because the fire destroyed the records, and the Bureau could not review these records. Petitioner is required to keep records for four years; however, if the requirement to produce records creates a hardship for a taxpayer, the auditor will work with the taxpayer to come to a reasonable solution for both parties, section 63-3624(c), Idaho Code; IDAPA 35.02.01.201.01.d. The Bureau formulated a method to review the purchases and sales, and Petitioner agreed with this method prior to the Bureau's review of the available business records.

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 upholds the Notice.

### **Conclusion**

In this case, Petitioner contended the audit findings were incorrect because the fire destroyed its records; however, Petitioner did not provide any additional documentation regarding the pre-fire transactions to show the Bureau's findings were not correct. Therefore, the Commission finds the amounts held taxable by the Bureau to be appropriate.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be an accurate representation of Petitioner's sales tax and use tax liability for the period April 1, 2012, through March 31, 2015.

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 sections 63-3045 and 3046, Idaho Code, and has updated interest accordingly. Interest is calculated through September 30, 2018, and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code until paid.

THEREFORE, the Notice, dated June 2, 2017, 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>
\$51,760	\$0	\$10,165	\$61,925

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 \_\_\_\_\_, 2018.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
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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