

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-304-022-528
[Redacted])	
)	
Petitioner.)	DECISION
_____)	

On January 24, 2018, 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 June 1, 2014, through May 31, 2017, in the total amount of \$236,439.

On January 31, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on June 14, 2018. Following the informal hearing, Petitioner provided additional documentation to the Commission on July 25, 2018. The Commission, having reviewed the audit file and considered the information obtained at the informal hearing and thereafter, modifies the Notice for the reasons that follow.

Background and Audit Findings

Petitioner is headquartered in [Redacted] with one business location in Idaho. Petitioner rents and sells scaffolding. Petitioner offers two contracts to its customers. In one agreement, Petitioner assembles the scaffolding at its customer’s job site, adds, removes, or reconfigures scaffolding to meet the needs of its customer, and disassembles the scaffolding at the end of the project. The other contract provides that Petitioner’s customer will assemble and disassemble the scaffolding. For both contracts, Petitioner transports its scaffolding to and from the customer’s job site on its own vehicles.

The Bureau conducted a comprehensive audit. Transportation charges, both to deliver scaffolding to the job site and return the scaffolding to Petitioner’s location at the conclusion of

the job, were held taxable if Petitioner was responsible for the assembly of the scaffolding. Scaffolding assembly and disassembly charges were also held taxable. The Bureau imposed a negligence penalty on the Notice. The Bureau did not propose any liability related to the contracts where Petitioner's customers assembled the scaffolding.

In addition to scaffolding, Petitioner applies industrial coatings, insulation, and pickling (acid-washing metal) treatments. Petitioner did not protest the Bureau's determinations regarding these transactions.

Petitioner's Protest

Petitioner asserts the freight charges described above are not taxable in accordance with IDAPA 35.01.02.061.01, which provides "Charges for transportation and handling of goods to the consumer are not included as a part of the sales price regardless of when title passes". Petitioner believes the assembly and disassembly of scaffolding is actually installation and de-installation labor, and therefore is not taxable if separately stated. Petitioner bases its position on IDAPA 35.01.02.011.02, which states "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". Finally, Petitioner contends it acted in a reasonably prudent manner by relying upon the IDAPA rules when determining the taxability of these items; therefore, no penalty should be imposed.

Relevant Tax Code and Analysis

The term "sale" includes the lease or rental of tangible personal property. Idaho Code §63-3612(2)(h). Idaho Code §63-3613 provides the following:

- (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold,...without any deduction on account of any of the following:...

1. The cost of the property sold...
2. The cost of materials used, labor or service cost, losses, or any other expense.
3. The cost of transportation prior to its sale...
(b) The term "sales price" does not include any of the following:...
4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property...
7. Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately

IDAPA 35.01.02.043.02 describes more specifically what labor and services should be included in the taxable sales price:

02. Services Agreed to be Rendered as a Part of the Sale.
The sales and use tax is computed on the sales price of a transaction. The term "sales price" is defined by Section 63-3613, Idaho Code, to include "services to be rendered as a part of the sale." The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. This is not intended to be an exclusive list of such items:
 - a. Any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer, including charges for assembly, fabrication, alteration, lubrication, engraving, monogramming, cleaning, or any other servicing, customizing or dealer preparation.

Petitioner contends the labor necessary to construct, and later remove, the rented scaffolding is nothing more than installation labor specifically excluded from the sales price subject to tax per Idaho Code §63-3613(b)(4). However, the Commission finds that the contract between Petitioner and its customers is for rental scaffolding that is assembled by Petitioner according to the customer's specifications, then disassembled and removed by Petitioner once the customer's use is complete. This sequence of events, and associated price, is agreed upon at the time the contract is executed between Petitioner and its customer. Petitioner's customers are seeking fully constructed scaffolding ready for use, rather than the individual pieces that comprise

the scaffolding. Therefore, the Commission determines Petitioner's labor costs are assembly and fabrication labor necessary to bring the product into a finished state in the condition specified by the buyer, and agreed-upon disassembly and removal, all of which are specifically included in the sales price subject to tax. *See* IDAPA 35.01.02.043.02.a; Docket 24067.

IDAPA 35.01.02.061.01 provides:

Whether or not transportation and handling charges are separately stated, the sales price includes any charges made for delivery of goods to the seller. Charges for transportation and handling of goods to the consumer are not included as a part of the sales price regardless of when title passes.

Petitioner shipped the components of the scaffolding from its facility to customer's location, then assembled the components into scaffolding ready for the customer to use. The customer could not use the pieces scaffolding for its intended purpose until Petitioner's workers constructed the scaffolding after it was delivered. As such, the freight charges to bring the scaffolding components to the customer's location constitute a delivery of goods to the seller (Petitioner). The Commission agrees with the Bureau that these charges are included in the sales price subject to tax.

IDAPA 35.01.02.029.02 specifies repairing and reconditioning as the process of refitting tangible personal property for the use it was originally produced. Repair labor is not taxable, provided it is separately stated from the sales price of any goods or materials. *See* IDAPA 35.01.02.062.02. Docket 24067 provides that "the labor to reconfigure a small part of an existing system seems more akin to a repair of existing tangible personal property rather than fabrication of something new." The Commission holds that Petitioner's modifications of previously assembled scaffolding might constitute renovation, or repair labor; for instance, moving scaffolding from the first area where it was assembled to other area(s) prior to the agreed-upon

disassembly and removal. However, in this matter the Commission found Petitioner failed to maintain and/or provide business records adequate to permit any adjustment for nontaxable renovation charges.

The Bureau added a negligence penalty to the sales and use tax deficiency. Taking into consideration all available information, the Commission finds Petitioner was not negligent, removes the penalty, and hereby modifies the Notice.

Conclusion

THEREFORE, the Notice of Deficiency Determination dated January 24, 2018, is hereby AFFIRMED as MODIFIED by this decision. Interest is calculated through March 31, 2019 and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

IT IS ORDERED that Petitioner pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$211,726	\$23,211	\$234,937

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.
