

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 0-350-646-272
)	
Petitioner.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>		

The Idaho State Tax Commission (Commission) reviewed [Redacted] (Petitioner) protest of the Notice of Deficiency Determination (Notice) dated February 24, 2017, and upholds the Notice as modified. Petitioner is responsible for sales tax, use tax, penalty, and interest for the period April 1, 2011, through December 31, 2015, in the **total amount of \$832,187**.

Petitioner did not respond to the letters sent November 17, 2017 and December 27, 2017 for an informal hearing and did not provide additional documentation for the Commission’s review.

Background and Audit Findings

Petitioner’s headquarters is located in [Redacted] Austria, and it maintains an office in [Redacted] North Carolina. Petitioner produces technically sophisticated machinery and service solutions for various industries.

In 2011, Petitioner won a contract to overhaul four turbines at the [Redacted] in Southeastern Idaho. Petitioner had a five-year contract to substantially complete this work. The project was still in progress during the audit period.

The Sales Tax Audit Bureau (Bureau) conducted a routine comprehensive audit of Petitioner’s business for the purpose of determining compliance with Idaho sales and use tax laws. The Bureau reviewed Petitioner’s sales invoices. The majority of the sales invoices showed Petitioner collected sales tax from its customers; however, Petitioner had not filed sales tax returns or remitted the sales tax collected from its customers. Thus, the Bureau held these sales subject to

sales tax. A small portion of the sales invoices showed Petitioner did not charge the customer tax. Therefore, the Bureau held these sales subject to sales tax as well.

Petitioner also provided purchase invoices for the Bureau's review. The Bureau examined the purchase invoices and determined many of them were not properly taxed. The Bureau held these purchases taxable. The Bureau also reviewed Petitioner's 2014 credit card invoices for a ten-month test period. The Bureau used the errors discovered during the test period to determine the error rate. Then, the Bureau projected the error rate over the entire audit period.

After the Bureau issued the Notice, Petitioner provided additional documentation to the Bureau. The Bureau reviewed the additional documentation and adjusted the Notice. However, the Bureau determined adjustments were not appropriate for Petitioner's purchases from the following suppliers: [Redacted]

The Bureau determined these items should remain taxable. Petitioner agreed with all issues asserted in the audit, however, disagrees and protests the Bureau's tax liability calculation for these three suppliers. Of the \$832,187 liability in the modified Notice, Petitioner protests only \$86,633 (exclusive of interest and penalty).

Relevant Tax Code and Analysis

Petitioner submitted seven [Redacted] invoices. Four of these invoices showed Petitioner's "bill to" and "ship to" address in [Redacted] North Carolina. [Redacted] (located in [Redacted] Idaho) listed the delivery method on these invoices as "our truck." Petitioner stamped these invoiced items for use on site, at the [Redacted] project in Idaho. In addition, [Redacted] taxed some items on the invoice, while other items were not taxed. [Redacted] charged Petitioner 7.25% sales tax on the taxed items delivered by "our truck" from October 1, 2014, through April 30, 2015. The sales tax rate for [Redacted] North Carolina, during the same time period was 7.25%; the Idaho sales tax rate was 6%.

Idaho sales tax is imposed on retail sales of tangible personal property, and use tax is imposed on the storage use or consumption of tangible personal property, unless an exemption applies to either, Sections 63-3619 and 3621, Idaho Code. A purchaser that is responsible for use tax on tangible personal property is able to receive a full credit for the amount of legally imposed sales or use taxes he paid on the same property to another State, Section 63-3701.Art.V.1, Idaho Code.

The [Redacted] location in Idaho [Redacted] delivered the invoiced items by “our truck” to Petitioner for use at the [Redacted] project and charged Petitioner 7.25% sales tax on the taxed items. If the sales tax was legally imposed by the state of North Carolina, then Petitioner would receive credit for the sales taxes paid on these invoices. However, [Redacted] was located in Idaho, delivered the items for use in Idaho, and invoiced Petitioner the North Carolina tax in error. Since the North Carolina sales tax was not legally imposed, Petitioner cannot receive credit for this tax. Thus, the Commission found the Bureau correctly held the items purchased from [Redacted] subject to Idaho use tax, Section 63-3621, Idaho Code.

The three remaining [Redacted] invoices provided by Petitioner listed the delivery method as “pickup.” Petitioner stamped these invoiced items for use on site, at the [Redacted] project in Idaho. [Redacted] charged Petitioner Idaho sales tax on these three invoices. However, the invoices included non-taxed items. Therefore, the non-taxed items are subject to Idaho use tax, Section 63-3621, Idaho Code.

Petitioner also provided an invoice, purchase order, and description of work from [Redacted] was a painting contractor/retailer on the [Redacted] project. The method [Redacted] used to complete the job determined the taxability. If [Redacted] painted the new equipment prior to its installation, the entire amount of the job would be taxable as fabrication labor, IDAPA 35.01.02.029. If [Redacted] pulled the equipment out of the dam, repaired and

painted it prior to its installation, then only the paint materials would be taxable; however, [Redacted] would be required to state the paint charges separately from the labor charges, IDAPA 35.01.02.046. Finally, if [Redacted] installed the equipment (new or old) before it was painted, then [Redacted] would be considered a contractor improving real property, and would owe tax on the paint, IDAPA 35.01.02.012. [Redacted] may have used a combination of all these methods to complete the job. However, Petitioner did not provide records listing the method(s) used to complete this job and is required to keep adequate records for a period of four years, Section 63-3624(c), Idaho Code. Therefore, the Commission found the information was insufficient to determine the nature of work completed by [Redacted]. Thus, the Commission holds the Bureau's determination that Petitioner's payments to [Redacted] are taxable, Section 63-3621, Idaho Code.

Lastly, Petitioner contends the invoice from [Redacted] in the total amount of \$1,766.78 was for repair labor on a [Redacted] Servo Motor. The Commission reviewed the [Redacted] invoice and researched [Redacted] website. According to [Redacted] website, the [Redacted]

Servo Motor was not currently available for sale, but [Redacted] had three similar motors for sale. They were: the [Redacted] Servo Motor (\$3,747.97), the [Redacted]

[Redacted] Servo Motor (\$1,433.70), and the [Redacted] Servo Motor (\$1,598.04). The Commission found the description provided and the amount indicated on the [Redacted] invoice to be both reasonable and probable for the sale of a reconditioned or new [Redacted]

Servo Motor, rather than a repair. The sale of new or reconditioned tangible personal property in Idaho is subject to sales tax or use tax, Sections 63-3619 and 3621, Idaho Code; IDAPA 35.02.01.029. Since Petitioner did not provide any additional information for the Commission to consider, the [Redacted] invoice is subject to use tax, Section 63-3621, Idaho Code.

Conclusion

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 modified Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission upholds the Notice as modified.

Absent information to the contrary, the Commission finds the modified Notice to be a reasonable representation of Petitioner’s sales tax and use tax liability for the period April 1, 2011, through December 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 February 24, 2017, as modified, 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>
\$592,441	\$136,878	\$102,868	\$832,187

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.
