BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of [Redacted] Petitioner.	))))))	DOCKET NO. 0-647-038-976 DECISION

The Idaho State Tax Commission (Commission) reviewed the protest of [Redacted] (Petitioner), and upholds the Notice of Deficiency Determination (Notice) dated January 4, 2018. This means that Petitioner is responsible for use tax, penalty, and interest for the period September 1, 2016, through September 30, 2016, in the **total amount of $9,536**.

On February 20, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission sent Petitioner hearing rights letters dated September 10, 2018 and October 15, 2018, but Petitioner did not request a hearing or provide additional documentation for the Commission's review.

Background and Audit Findings

In September 2016, Petitioner imported prefabricated building materials from [Redacted] through U.S. customs, and declared Idaho as the final destination. [Redact prefabricates post and beam homes, and then provides on-site supervision of the homes reassembly.

On August 4, 2017, the Tax Discovery Bureau (Bureau) sent Petitioner a letter related to the prefabricated building purchase. The letter specifically requested that Petitioner send one of the following items by August 25, 2017: documentation showing sales/use tax had been paid, documentation showing how these transactions qualified for an exemption to Idaho sales/use tax, or payment of $7,491. On August 11, 2017, Petitioner called the Bureau but did not provide any documentation or a payment. On September 22, 2017, the Bureau sent a second letter again

requesting documentation or payment of use tax and interest. Petitioner then provided the Bureau with documentation which listed the shipping costs and labor. On October 23, 2017, the Bureau sent Petitioner a third letter reducing the "total value of items purchased" by the amount of the shipping costs and a final request for documentation or payment of the use tax and interest. On November 14, 2017, Petitioner called the Bureau to ask about the taxability of labor but did not send the Bureau any documentation or a payment. The Bureau then issued the Notice on January 4, 2018.

Petitioner's Protest

Petitioner did not cite a specific legal or factual reason the Notice is incorrect. Rather, Petitioner requested abatement of the interest and penalties because he did not know the tax was due at the time of purchase.

Relevant Tax Code and Analysis

Petitioner requests abatement of interest that was calculated on the tax deficiency in conformity with 63-3045, Idaho Code. The Idaho Supreme Court addressed whether a taxpayer was required to pay interest in *Union Pacific Railroad Company v. State Tax Commission*, 105 Idaho 471, 670 P.2d 878 (1983). The Court stated, "We agree with the State that I.C. § 63–3045(c) is clear and unequivocal when it states that "interest ... shall be assessed" and "shall be collected." This section is not discretionary, but rather, it is mandatory." Therefore, the Commission upholds the interest assessed.

Petitioner also requests abatement of the penalty. The Bureau's first three letters did not include a penalty. Since Petitioner did not provide documentation showing the amount of tax was incorrect and did not pay the tax due, the Bureau then issued a Notice assessing a 25% non-filer penalty on the tax due. If a return is not filed on or before the return due date, a 5% penalty of the

return's tax due may be collected for each month that passes after the return due date, until the return is filed. The total non-filer penalty cannot exceed 25% of the return's tax due, Section 63-3046, Idaho Code. Since Petitioner did not file a return, the Commission finds the non-filer penalty appropriate.

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." *See 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.

Absent information to the contrary, the Commission finds the Notice to be an accurate representation of Petitioner's use tax liability for the period September 1, 2016, through September 30, 2016.

The Bureau added penalty and interest to the use tax deficiency. The Commission reviewed this addition, and finds it to be appropriate per sections 63-3045 and 3046, Idaho Code, and has updated interest accordingly. Interest is calculated through January 31, 2019, and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code until paid.

THEREFORE, the Notice, dated January 4, 2018, 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:

TAX	PENALTY	INTEREST	TOTAL
$7,158	$1,790	$588	$9,536

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

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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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