

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[Redacted]) DOCKET NO. 0-752-945-152
)
)
Petitioner.) DECISION
_____)

On March 31, 2017, 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, 2009, through May 31, 2016, in the total amount of \$148,393.

On May 2, 2017, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on September 27, 2017. The Commission, having reviewed the audit file and information obtained during the hearing, hereby issues its decision to uphold the Notice.

Background and Audit Findings

Petitioner is a Washington-based contractor, which installs and services commercial and residential garage doors in Idaho, Washington, and Oregon. The business has no physical locations or assets in Idaho.

During routine reviews of commercial construction contracts, the Bureau found that Petitioner had entered into contracts to improve real property in the state of Idaho on a recurring basis since at least 2007. The Bureau commenced a comprehensive audit of Petitioner in June 2016 to determine Petitioner’s Idaho sales tax and use tax compliance. Sales tax errors were found, as Petitioner had collected sales tax from customers on some contracts within Idaho

but had not remitted any sales tax to the Commission. The Bureau also identified a use tax deficiency, as Petitioner did not pay tax on materials used to improve real property in the state of Idaho.

Petitioner's Protest

Petitioner contends the assessment of both sales tax collected but not remitted and use tax is double taxation. Petitioner also requested a reduction in penalty.

Relevant Tax Code and Analysis

In Idaho, the sale, purchase, and use of tangible personal property are subject to tax unless an exemption applies. If sales tax is not paid to the vendor, the buyer owes a use tax to the state. Payment of use tax extinguishes the sales tax obligation. Idaho Code §§ 63-3612 and 63-3621.

For sales tax and use tax purposes, a contractor improving real property is the consumer of any materials that become part of the realty and owes a sales tax or use tax on such materials:

All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property. Idaho Code § 63-3609(a).

The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section 63-3622D, Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business. Idaho Code § 63-3615(b).

All sales of tangible personal property to contractors are taxable. IDAPA 35.01.02.012.

Petitioner was neither registered with Idaho as a retailer, nor did it have an Idaho use tax reporting

number, until after the commencement of the Bureau's comprehensive audit. The Commission's records indicate the Bureau contacted Petitioner regarding commercial construction contracts on at least thirty-five (35) separate occasions between 2007 and June 2016. Many of the Bureau's contacts resulted in Petitioner paying use tax, plus penalties and interest, on the cost of materials used to improve real property within the state of Idaho. During these contacts, the Bureau advised Petitioner in writing of the need for a seller's permit or use tax reporting number; however Petitioner did not heed the Bureau's advice to register with the Commission until after the comprehensive audit was initiated in June 2016.

The Bureau's comprehensive audit revealed Petitioner collected sales tax on some contracts to improve real property within Idaho, and did not pay these amounts over to the state of Idaho. Contractors do not charge a sales tax to their customers unless they make a sale of materials only, with no installation. IDAPA 35.01.02.012.01.b. Petitioner charged its customers sales tax in error, then failed to remit the erroneously collected tax to the Commission. A retailer has a responsibility to remit all sales tax collected to the state of Idaho. IDAPA 35.01.02.105 states that "[t]he sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules." No double taxation exists. This issue was addressed in *Jeppson*, in which the Court held, "[T]he Court finds that the Commission has not acted contrary to legal duty by retaining the over-collected sales tax . . .". *Jeppson v. Idaho State Tax Commission*, CVOC 0911660, in the Order Denying Motion To Certify Class and Order Granting Motion To Dismiss, p. 11 (Fourth Judicial District 2009).

Also, Idaho Code § 63-3623A identifies all moneys collected by retailers in compliance with Chapter 36, Title 63, Idaho Code, as state money and goes on to state that "[s]uch money

shall not, for any purpose, be considered to be a part of the proceeds of the sale to which the tax relates.” There is no statute of limitations on the assessment or collection of sales tax collected and not remitted. Idaho Code § 63-3633(d).

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 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 Petitioner’s sales tax and use tax liability for the period June 1, 2009, through May 31, 2016.

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 June 30, 2018, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice dated March 31, 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>
\$108,499	\$27,125	\$16,812	\$152,436
	Less Payment Effective 5-9-17:		(\$5,000)
	AMOUNT NOW DUE:		<u>\$147,436</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 _____, 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.
