

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-945-442-816_25719
[Redacted]	)	
	)	DECISION
Petitioner.	)	
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The Idaho State Tax Commission (Commission) reviewed the protest of [Redacted] (Petitioner), and upholds the Notice denying the taxpayer initiated refund, dated March 14, 2013, for the sales tax and use tax period of December 31, 2011, **in the amount of \$61,357.**

On April 29, 2013, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission sent hearing rights letters to Petitioner on October 30, 2014 and May 31, 2018; however, Petitioner has not requested a hearing or provided additional documentation for the Commission’s review.

**Background and Audit Findings**

On September 23, 2009, [Redacted] (Contractor) and Petitioner entered into a subcontract agreement (Agreement) for Petitioner to design, fabricate, and install a cooling tower for the [Redacted] (Plant). Petitioner remitted the taxes it collected from the Contractor for this project on its December 2011 sales and use tax return.

On March 29, 2012, Petitioner filed an amended December 2011 sales and use tax return with the Commission. Petitioner’s amended return reduced the total sales from \$2,662,430 to \$1,639,814, and the amount of tax due from \$159,591 to \$98,234. The Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) reviewed the amended return and requested additional documentation to substantiate these changes.

Petitioner provided the Bureau with a partial copy of the Agreement with the Contractor. The Agreement defined the scope of work Petitioner was required to complete, the amount the Contractor agreed to pay Petitioner upon full and final performance of the work, and the taxes, permits, licenses and fees included in the total contract price. The Bureau reviewed the terms of the contract and determined Petitioner correctly remitted the taxes it collected from the Contractor.

### **Petitioner's Protest**

Petitioner contends the cooling tower, constructed as part of the Plant, is an article of real property, and the cost of the materials incorporated into the real property are subject to use tax, rather than sales tax on the total sales price.

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

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, section 63-3609(a), Idaho Code. Petitioner asserts the materials used to construct the cooling tower became a part of real property and were subject to use tax rather than the sales taxes it collected and remitted to the Commission.

The Commission reviewed the Agreement and finds it is for the sale of tangible personal property. Tangible personal property is subject to sales tax, unless an exemption applies, section 63-3619, Idaho Code. Therefore, the Commission finds the cooling tower sales subject to sales tax.

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.

### **Conclusion**

In this case, Petitioner contended materials used to assemble the cooling tower were subject to use tax, rather than the sales tax it collected from the Contractor. Petitioner collected sales tax from the Contractor, and the Commission determined Petitioner appropriately remitted the taxes collected from the Contractor. Therefore, the Commission denies Petitioner's refund request.

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 computation for the December 31, 2011 period.

THEREFORE, the Notice, dated March 14, 2013, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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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