

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 0-966-338-560
)	
Petitioner.)	DECISION
_____)	

On August 30, 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 May 1, 2007, through April 30, 2014, in the total amount of \$1,627,427.

On November 1, 2017, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on May 31, 2018.

The Commission, having reviewed the audit file as well as information obtained at the hearing, upholds the Notice for the reasons that follow.

Background and Audit Findings

Petitioner is a [Redacted] dealer in [Redacted] Idaho, which sells motorcycles, ATVs, UTVs, and power equipment (generators, lawn mowers, etc.). Petitioner also services the products it sells. Petitioner is an Idaho-based corporation and has maintained an Idaho seller’s permit since August 1999.

The Bureau conducted a routine comprehensive audit to determine Petitioner’s compliance with Idaho sales tax and use tax laws. The Bureau found errors in the sales tax reconciliation, which revealed that not all sales tax collected from Petitioner’s customers was remitted to the state of Idaho. The Bureau also identified taxable errors in whole unit sales, ordinary sales, asset additions, ordinary purchases, and donations. Petitioner does not dispute the tax due as shown on

the Notice. The Bureau imposed a 50 percent fraud penalty for the failure to remit the collected tax.

Petitioner's Protest

Petitioner protested the fraud penalty imposed by the Bureau. According to Petitioner, the fraud penalty is unwarranted, unproven, and punitive. Petitioner contends the liability resulting from the audit is due to negligence, and requests the Commission reduce the penalty accordingly.

Relevant Tax Code and Analysis

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies. *See* Idaho Code §63-3619.

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.”

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.”

The failure to remit all taxes collected from customers may constitute fraud:

Penalties and additions to the tax in case of deficiency. (a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.
(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

Idaho Code § 63-3046.

IDAPA 35.02.01.420.01 provides guidance to determine if a fraud penalty applies:

In General. In determining fraud penalties, the Tax Commission shall review all facts and circumstances surrounding preparation of a taxpayer's return including all of the following:

- a. Public and private statements regarding income or sales of the taxpayer;
- b. Business and financial practices of the taxpayer;
- c. Taxpayer's knowledge of principles of finance, accounting, law, or taxation;
- d. Objective and subjective evidence showing or tending to show intent to evade payment of taxes.

Over 99 percent of the tax shown on the Notice is attributable to discrepancies in the sales tax reconciliation performed by the Bureau. The average sales tax remitted each month during the audit period was \$11,600; however, nearly 50 percent of the sales tax collected each month was not remitted to the Commission. The sales journal provided to Bureau staff clearly showed the sales tax charged to customers. Petitioner told the Bureau the variances were due to major unit sales that were never finalized, but was unable to provide any additional documentation in support of this assertion. Bureau staff tested this explanation using Petitioner's point-of-sale and accounting systems, and noted that only transactions marked as final flowed to the sales journal documents examined during the audit.

The audit period ended on April 30, 2014. The Bureau examined Petitioner's sales journal for the period May 1, 2014 through April 30, 2016, and noted a variance of \$129,335 in sales tax collected (as shown in Petitioner's sales journal), but not remitted to the Commission. The Bureau's first contact with Petitioner was in February 2014; therefore, this analysis indicates that Petitioner continued its practice of remitting only a portion of the sales tax collected, even after the Bureau informed Petitioner it had been selected for an audit.

During the informal hearing, Petitioner's representative acknowledged that the individual who handled all of Petitioner's financial affairs knew that she was collecting sales tax from

customers and not remitting the sales tax collected to the Commission. Petitioner's representative stated, Petitioner was short on money and used the sales tax collected but not remitted to pay other obligations.

Petitioner's records clearly indicated sales tax was collected from customers, and documented that sales tax from specific transactions was retained by Petitioner rather than remitted to the Commission. Petitioner's financial transactions, records, and tax returns show it made a conscious decision to retain a substantial portion of the sales tax collected for personal use. This deception occurred for a significant length of time, with variances found by the Bureau in each month within the seven-year audit period.

Pursuant to IDAPA 35.02.01.420.01, Petitioner's private statements, business and financial practices, and knowledge that collected tax was deliberately not remitted, clearly demonstrate by objective and subjective evidence an intent to evade payment of taxes. Furthermore, there is no statute of limitations on assessment or collection for sales tax collected and not remitted:

The periods of limitation upon assessment and collection provided in this section shall not apply:

- (1) In cases where the facts disclose a false or fraudulent act with the intent to evade tax, or
- (2) To taxes collected by a retailer, seller or any other person who has failed to pay over such taxes to the state tax commission.

Idaho Code § 63-3633(d).

As a result, the Commission will uphold the fraud penalty proposed by the Bureau.

Conclusion

The Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales tax liability for the period May 1, 2007, through April 30, 2014.

The Bureau added interest to the sales tax deficiency. The Commission reviewed this addition and found it to be appropriate per Idaho Code §63-3045, and has updated interest

accordingly. Interest is calculated through February 28, 2019, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated August 30, 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>
\$914,459	\$457,230	\$304,217	\$1,675,906
Less Payment Received May 31, 2018:			<u>(\$100,000)</u>
TOTAL DUE:			<u>\$1,575,906</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.
