

taxed purchases subject to \$3,566 in use tax. Petitioner did not dispute the Bureau's audit findings for purchases. Therefore, they will not be addressed in this decision.

Petitioner's Protest

Petitioner asks the Commission to reduce the total non-taxed sales received from customers by the amount of sales tax due. Petitioner also claims the audit time frame seemed excessive.

Relevant Tax Code and Analysis

Idaho sales tax is imposed on retail sales of tangible personal property, unless an exemption applies, section 63-3619, Idaho Code. A sale is defined to include the lease or rental of tangible personal property, section 63-3612(2)(h), Idaho Code. The Bureau held non-taxed rentals subject to sales tax.

Petitioner suggested the total non-taxed sales received from customers should be reduced by the amount of sales tax due. However, this suggestion is in direct conflict with Idaho law and rules. Retailers are required to display the amount of tax collected separately from the list price, marked price, the price advertised in the premises or other price on the sales slip or other proof of sale, IDAPA 35.01.02.068.06. In this case, Petitioner did not separately state the amount of tax due or collect tax on its rentals of tangible personal property. Therefore, the Commission finds Petitioner was required to collect and remit tax on the rental price listed.

Additionally, section 63-3627(a), Idaho Code, states:

“Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of such taxpayer as an officer, member or employee of such taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.”

Therefore, the Commission finds Petitioner had a duty to collect and remit sales tax on its rentals and is liable for tax it did not collect from its customers, sections 63-3612(2)(h) and 63-3627(a), Idaho Code.

Petitioner also argues the audit time frame seemed excessive. However, section 63-3624, Idaho Code, authorizes the Commission to enforce the administration of sales and use tax requirements. It states in pertinent part:

(c) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction.

(e) The state tax commission, or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

The Commission reviewed the audit period, statute waiver, and the length of time it took the Bureau to complete the comprehensive audit. The Commission finds the Bureau reviewed the audit period in a timely manner.

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 upholds the Notice.

Conclusion

In this case, Petitioner asked the Commission to reduce the total sales price by the sales tax due. However, sales tax is required to be separately stated from the sales price. In addition,

Petitioner is required to collect and remit taxes imposed by law. Therefore, the Commission finds the amounts held taxable by the Bureau appropriate and the comprehensive audit warranted. Petitioner also contended the three year audit period was excessive. The Commission finds the Bureau examined the audit period in an efficient and timely manner.

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 liability for the period September 1, 2014, through August 31, 2017.

The Bureau added interest 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 November 30, 2018, and will continue to accrue at the rate set forth in sections 63-3045(6), Idaho Code until paid. No penalty was assessed.

THEREFORE, the Notice, dated March 13, 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$29,729	\$2,691	\$32,420

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.
