BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of [Redacted] Petitioner.	))))))	DOCKET NO. 1-310-992-384 DECISION

The Idaho State Tax Commission (Commission) reviewed the protest of [Redacted] (Petitioner), and modified the Notice of Deficiency Determination (Notice) dated July 21, 2017. This means that Petitioner is responsible for sales tax, use tax, penalty, and interest for the period September 1, 2015, through September 30, 2015, in the **total amount of $2,890**.

Background and Audit Findings

Petitioner is an Illinois based contractor improving real property. [Redacted] hired Petitioner, as a subcontractor, to complete a [Redacted] Store remodel in [Redacted] Idaho. The total contract price for this remodel was $89,241.

The Sales Tax Audit Bureau (Bureau) requested project information from Petitioner on three occasions in order to determine Petitioner's compliance with Idaho sales tax and use tax laws, but Petitioner did not respond. Since Petitioner did not provide the requested project information, the Bureau computed the tax liability based on industry averages for contracts of this nature using 55% of the total contract price to calculate the cost of materials used. The Bureau then held this amount subject to tax, which resulted in a liability of $2,945.

Petitioner's Protest

Petitioner protests the sales tax and use tax audit findings. Petitioner contends it purchased all the job materials in the state of Idaho and paid all sales tax due at the time of purchase.

Relevant Tax Code and Analysis

The sale of tangible personal property is subject to sales tax, and use tax is imposed on the storage, use or consumption of tangible personal property, unless an exemption applies to either, sections 63-3619 and 3621, Idaho Code. As a contractor, Petitioner is required to pay tax on materials installed in real property, section 63-3609, Idaho Code. Contractors are the consumers of the materials they use, and all sales of tangible personal property to contractors are taxable, IDAPA 35.01.02.012.01.

Section 63-3624, Idaho Code, authorizes the Commission to enforce the administration of sales tax 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.

Petitioner provided no documentation to the Bureau substantiating it properly paid sales taxes and use taxes on real property improvements in Idaho. After filing its protest, Petitioner provided the Commission with one invoice from [Redacted] Supply showing sales tax was paid in the amount of $462.28 on materials it purchased and shipped directly to the [Redacted] Store in [Redacted] Idaho. The Commission reviewed this invoice and found an adjustment was appropriate reducing the Notice by the amount of sales tax shown. Petitioner also purchased

project materials from [Redacted] . At the request of the Commission, [Redacted] reviewed its records and identified one invoice for Petitioner. [Redacted] provided this invoice to the Commission which showed Petitioner paid sales tax on material purchases in the amount of $0.72. The Commission reviewed this invoice and reduced the Notice by the amount of sales tax shown. Since Petitioner did not provide documentation for all its purchases as required by law, the Commission finds the amount held taxable by the Bureau, less the adjustments noted above, due.

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 upholds the Notice as modified.

Absent information to the contrary, the Commission finds the modified Notice to be an accurate representation of Petitioner's sales tax and use tax liability for the period September 1, 2015, through September 30, 2015.

The Bureau added penalty and interest to the sales tax and use tax deficiency. The Commission reviewed this addition, and finds it to be appropriate per sections 63-3045 and 63-3046, 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 section 63-3045(6), Idaho Code until paid.

THEREFORE, the Notice, dated July 21, 2017, as MODIFIED 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
$2,482	$124	$284	$2,890

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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