BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of [Redacted] Petitioner.	))))))	DOCKET NO. 1-515-800-576 DECISION

On June 21, 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 use tax, penalty, and interest for the period December 1, 2016, through December 31, 2016, in the total amount of $34,673.

On August 15, 2017, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission scheduled an informal hearing on March 20, 2018. On March 19, 2018, Petitioner withdrew its request for an informal hearing. On March 20, 2018, Petitioner submitted additional written documentation regarding its protest and requested the Commission issue a decision in this matter.

Having reviewed the audit file, Petitioner's protest, and the additional documents submitted by Petitioner, the Commission hereby upholds the Notice.

Background and Audit Findings

Petitioner is a Utah-based contractor improving real property. The project in question was the remodel of a building in [Redacted] Idaho. Petitioner was hired by the general contractor, [Redacted], as a subcontractor to provide and install millwork, including but not limited to doors and doorframes. [Redacted] was one of Petitioner's suppliers. [Redacted] fabricated custom goods for the project at its location in Utah, and had the goods delivered via common carrier to the job site in [Redacted] Idaho. [Redacted] did not install any of the materials. Petitioner paid [Redacted] a total of $541,245, of which $172,251 was the cost of materials

[Redacted] utilized to fabricate the custom goods.

The Bureau determined Petitioner owed use tax on the entire sales price of the fabricated goods shipped into Idaho by [Redacted] plus penalty and interest.

Petitioner's Protest

Petitioner contends it was initially unaware this job was taxable, as the work was completed on a building owned by a tax-exempt religious organization. Petitioner's protest states it has performed services for similar organizations in other states, and the projects were not subject to sales tax or use tax. Petitioner now understands that such projects are not exempt in Idaho; however, Petitioner asserts it is only responsible for use tax based upon the materials [Redacted] used to fabricate the custom goods, rather than the entire contract amount. According to Petitioner, [Redacted] was a subcontractor, not a supplier, and therefore only the materials should be taxed, not the labor and services performed by [Redacted] In November 2017, Petitioner remitted a payment of $11,104.94, which represents the use tax due on the cost of the materials from [Redacted] plus associated 5% negligence penalty and accrued interest.

Relevant Tax Code and Analysis

Idaho Code § 63-3621 imposes use tax on all tangible property brought into Idaho unless an exemption applies. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho. If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state. Idaho Code § 63-3621.

Idaho Code § 63-3609(a) provides in pertinent part:

> (a) 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.

Contractors are the consumers of the materials they use, and all sales to or use by contractors of tangible personal property are defined as a retail sale. IDAPA 35.01.02.012.01.

Further, IDAPA 35.01.02.012.01.c specifies "the terms 'contractor' and 'subcontractor' are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property."

In this case, Petitioner contends [Redacted] is its subcontractor, and asserts use tax is due only on the materials utilized by [Redacted] to construct the goods delivered into Idaho for Petitioner to install. However, [Redacted] does not meet the definition of a "subcontractor" provided by IDAPA Rule 012 because [Redacted] did not have "any requirement that they install such tangible personal property," rather, [Redacted] is a retailer in this case and Petitioner's purchase of goods from [Redacted] is a retail sale as defined in Idaho Code and IDAPA Rule. The contract at issue specifically excluded installation from the scope of work to be performed by [Redacted] did not assist in the installation.

Use tax is applicable to the entire contract between [Redacted] and Petitioner, as tax applies to the entire price charged for custom-made goods sold by the maker. IDAPA 35.01.02.012.08.

IDAPA 35.01.02.012.09 provides "The contractor owes use tax on the value of the job materials at the time he exercises right or power over them." In this case, [Redacted] shipped fully fabricated custom goods to Petitioner via common carrier. Therefore, Petitioner owes use tax on the entire contract price with [Redacted] as the goods were complete at the time they were shipped to Petitioner.

The Commission, having considered all of the information available, determined that [Redacted] provided materials that Petitioner installed into real property within the state of Idaho. [Redacted] is a supplier, not a contractor. The Commission finds use tax is due on the entire amount paid to [Redacted] by Petitioner.

Conclusion

The Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's use tax liability for the period December 1, 2016, through December 31, 2016.

The Bureau added interest and penalty to the 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 December 31, 2018, 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 June 21, 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:

TAX	PENALTY	INTEREST	TOTAL
$32,475	$1,624	$1,765	$35,864
		Less Payment Effective 11-14-2017	(11,104.94)
		Amount Now Due:	$24,759.06

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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