

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
[Redacted])	DOCKET NO. 1-910-429-696
)	
)	
Petitioner.)	DECISION

On February 16, 2018, 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 August 1, 2011, through July 31, 2014, in the total amount of \$7,194.

On February 27, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission sent hearing rights letters to Petitioner on July 5, 2018, and August 13, 2018. No response was received from Petitioner.

Having reviewed the audit file, the Commission hereby upholds the Notice.

Background and Audit Findings

Petitioner is an international retailer founded in [Redacted] sold toys, clothing, video games, and baby products. Petitioner operated three stores in Idaho during the audit period, but has since closed all its locations within the United States.

The Bureau conducted a routine comprehensive audit to determine Petitioner’s compliance with Idaho sales tax and use tax laws. Errors were noted in Petitioner’s accrual of use tax on advertising inserts, fixed asset additions, and ordinary expenses. The Bureau imposed a negligence penalty on the Notice.

Petitioner's Protest

Petitioner does not dispute the tax due, and has paid the tax and interest shown on the Notice in full. Petitioner requests an abatement of the penalty imposed on the audit findings, as it believes the small audit liability relative to the \$3.76 million in sales tax and use tax remitted to Idaho during the audit period, and contends that its audit liability is not due to willful negligence, willful neglect, or fraud. Petitioner states it is committed to being compliant with Idaho regulations.

Relevant Tax Code and Analysis

Idaho Code §63-3046(a) provides the following:

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.

IDAPA 35.02.01.410.02 provides a 5% negligence penalty shall be imposed if the deficiency result from either negligence of the taxpayer or from disregard by the taxpayer of state tax laws or Tax Commission rules. Negligence is defined as “the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct.” IDAPA 35.02.01.410.01.

The errors held taxable on the current Notice were brought to Petitioner's attention in two prior audits conducted by the Bureau. On October 2, 1998, the Bureau issued Petitioner a Notice for the audit period October 1, 1993, through September 30, 1996, for use tax due on advertising expenses. Petitioner told the Bureau it would conduct a self-audit of these issues to ensure future compliance; therefore, the Bureau did not impose a penalty. On November 19, 2007, the Bureau issued Petitioner a Notice for the audit period June 1, 2002 through May 31, 2005, for use tax due

on advertising. A negligence penalty was imposed on this Notice due to Petitioner's failure to properly accrue and pay taxes due. Petitioner requested an abatement of the penalty, and the Bureau removed the penalty with assurance from Petitioner that it would change its business practices to ensure future compliance.

In the current matter, the errors held taxable by the Bureau are virtually identical to those identified in the prior audits conducted by the Bureau. The Tax Commission Administration and Enforcement Rules provide examples that justify the imposition of a penalty for negligence, including when the taxpayer "makes unsubstantiated or exaggerated claims of deductions or exemptions" and "exhibits a careless disregard of his tax obligations." IDAPA 35.02.01.410.02.c, 35.02.01.410.02.f. Although Petitioner was aware of the errors, Petitioner did not resolve them. The Commission finds adequate evidence to demonstrate Petitioner's negligence, and determines the Bureau's penalty imposition to be appropriate.

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 will uphold the Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales tax and use tax liability for the period August 1, 2011, through July 31, 2014.

THEREFORE, the Notice of Deficiency Determination dated February 16, 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, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$5,167	\$258	\$1,769	\$7,194
Less Payment Effective 3-20-2018:			<u>(\$6,936)</u>
Amount Due:			<u>\$258</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.
