

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)

[Redacted])

Petitioner.)

DOCKET NO. 25723

DECISION

On March 1, 2012, the staff of the Sales 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 January 1, 2006, through December 31, 2011, in the total amount of \$63,948. On April 4, 2012, Petitioner filed a timely appeal and petition for redetermination of the Notice. In April, May, and July of 2012, Petitioner provided additional sales tax and use tax information. The Bureau reviewed the information provided by Petitioner and determined an adjustment was appropriate. The Notice was modified.

The Commission sent hearing rights letters on October 30, 2014, and November 12, 2014. An informal hearing was set for June 9, 2015, but was not attended by Petitioner or rescheduled. The Commission sent a hearing rights letter again on January 20, 2016, but received no response.

The Commission is advised of the contents of the audit file and the issues raised in Petitioner's protest and hereby issues its decision modifying the Notice for the reasons that follow.

Background and Audit Findings

In January 2006, Petitioner opened [Redacted] practice with locations in [Redacted] Idaho and [Redacted] Idaho. The Bureau examined Petitioner's 2009 ordinary purchases, and projected the resulting error rate over the other periods included in the audit. The Bureau also examined Petitioner's 2006 through 2010 fixed asset purchases, and projected the resulting error rate over

calendar year 2011. The Bureau requested invoices and documentation of sales tax paid for the items held taxable; however, additional documentation was not provided during the audit.

Petitioner provided additional records after the Notice was issued. The Bureau reviewed the records provided by Petitioner and adjusted the Notice. On August 21, 2012, the Bureau sent a letter to Petitioner notifying them of the adjustment and requesting any additional documentation or information by September 11, 2012. The Bureau did not receive a timely response to this letter or to the additional phone calls, emails, and letters that were directed to Petitioner concerning its protest. However, on April 5, 2013, the Bureau received a letter from Petitioner, which included additional invoices and documentation. The documentation included invoices from [Redacted] and [Redacted], which showed Petitioner paid sales tax on these purchases. The Bureau reviewed these invoices, but still held the purchases taxable. On May 3, 2013, Petitioner notified the Bureau that it wished to continue its protest and the file was transferred to Appeals for resolution.

Petitioner's Protest

Petitioner contests the use of an estimate by the Bureau over the audit period, as well as individual purchases that were held taxable by the Bureau.

Relevant Tax Code and Analysis

Sales tax is imposed on retail sales of tangible personal property, and use tax is imposed on the storage use or consumption of tangible personal property, unless an exemption applies to either. Idaho Code §§ 63-3619, 63-3621.

Petitioner is also required to maintain proper business records per Idaho Code § 63-3624(c) which states, in part:

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.

In this case, the Bureau requested detailed documentation and records from Petitioner for the 2009 period. The information provided by Petitioner did not show the sales or use taxes were paid correctly on purchases made during the test period. Based on the 2009 sample, the Bureau determined an error rate and projected it over the entire audit period. Petitioner has not shown that the Bureau's projection is incorrect.

Petitioner also questioned the fixed assets that were held taxable by the Bureau. Petitioner did not provide the Bureau with adequate documentation to substantiate sales or use taxes were paid correctly on all fixed asset purchases. However, the Commission found the invoices from [Redacted] submitted by Petitioner on April 5, 2013, which included sales tax paid to the sellers. The Commission modified the Notice to exclude these invoices.

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 except the invoices discussed above and therefore Commission upholds the Notice with modifications.

Absent information to the contrary, the Commission finds the Notice as modified to be a reasonably accurate representation of Petitioner's use tax liability for the period January 1, 2006, through December 31, 2011.

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 May 31, 2018, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice dated March 1, 2012, is hereby MODIFIED, 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>
\$17,898	\$895	\$7,855	\$26,648

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.
