BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of [Redacted] Petitioner.	))))))	DOCKET NO. 0-827-574-272 DECISION

On February 8, 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 amusement device decal fees, penalty, and interest for the period July 1, 2017, through June 30, 2018, in the total amount of $24,673.

On April 10, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on November 6, 2018. The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing and thereafter, and hereby issues its decision upholding the Notice.

Background

Petitioner operates an arcade in [Redacted] Idaho, which specializes in [Redacted] arcade games but also offers food and beverages, including beer and wine. The Bureau conducted this audit solely to determine compliance with Idaho's amusement device decal requirements; Petitioner's sales and use tax compliance was not reviewed.

Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee ($42) in lieu of sales tax remitted from each device's revenue stream. Additionally, the statute imposes a $50 penalty per device for the owner/operator's failure either to buy the permits timely or display the decals as evidence that the required fees have been paid. The code section is noted below, in pertinent part:

> **Amusement devices**.
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> (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices. * * *
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> **(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year.** Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.
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> (e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.
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> (f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:
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> **(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars ($50.00) for each device for failure to pay timely permit sticker fees**. * * *
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> (g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

Idaho Code § 63-3623B, Emphasis added.

Amusement device decals are valid for a twelve-month period beginning in July, and current amusement device operators are mailed a renewal letter prior to the expiration of the decals. On May 9, 2017, the Commission mailed Petitioner a renewal notice for its amusement device decals. However, Petitioner did not purchase any amusement device decals for the period commencing July 1, 2017, in a timely manner. As Petitioner did not renew its amusement device

decals, the Commission cancelled Petitioner's account on July 11, 2017. The Bureau reviewed Petitioner's amusement devices in service on January 17, 2018, and determined 265 decals were required for the amusement devices that were in service that day. These decals are included on the protested Notice, along with associated penalties and interest.

Petitioner's Protest

Petitioner protested the penalty imposed on the Notice. According to Petitioner, it contacted the Governor's office in early 2017 in an effort to change the laws related to the cost of amusement device decals. Petitioner stated that when it received notice of the cancellation of its amusement device decal account from the Commission, Petitioner assumed that the account had been closed and its issue resolved as a result of its contact with the Governor's office. On November 6, 2017, Petitioner submitted a payment of $2,646, which it believed "to be an approximate representation of the tax amount that would be owed based on our efforts with the Governor's office." Petitioner paid an additional $7,854 on April 12, 2018.

Analysis and Conclusion

Petitioner has operated this business since approximately 2011. Each year, the Commission sends a reminder letter to amusement device permit holders, such as Petitioner. Reminder notifications are not statutory. The Commission sends them as part of its compliance and enforcement activities. It believes that the renewal letters are sufficient for this purpose based on the high level of voluntary compliance experienced. In spite of the annual reminder letter mailed by the Commission, Petitioner has a history of failing to meet the deadline for renewing its decals, with penalties imposed in 2012, 2013, 2014, and 2017.

During the informal hearing, Petitioner acknowledged its amusement devices likely have more sales throughout the year than is represented by the $42 decal fee paid in lieu of sales tax.

Petitioner also admitted it was aware of its responsibility to maintain current amusement device decals on its machines, and stated its previous noncompliance was due to either insufficient cash flow from the business, resentment towards the tax laws requiring the decals, or both. Petitioner believes the amusement device decals are inequitable, because owners of devices that require payment of $1 or more pay the same fee as Petitioner, whose devices each accept a quarter. This perceived disparity prompted Petitioner to contact the Governor's office during 2017 in an effort to change the amusement device decal fees. According to Petitioner, it believed its ongoing communication with the Governor's staff resulted in the cancellation of its amusement device decal account with the Commission in July 2017 and a resolution of the issues with the Commission.

After the informal hearing, Petitioner provided a copy of its email communications with the Governor's staff regarding amusement device decals. The Commission noted this email exchange commenced on August 28, 2017; approximately six weeks after Petitioner received the Commission's letter cancelling its amusement device decal account. The timing of the email exchange contradicts Petitioner's explanation of the basis for nonrenewal of its amusement device decals and subsequent cancellation of its account or resolution of its issues with the Commission.

Petitioner did not provide evidence adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the Notice. A determination of the State Tax Commission is presumed to be correct (*See Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 1984) and the burden is on Petitioner to show that the deficiency is erroneous (*See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's amusement device decal liability for the period July 1, 2017, through June 30, 2018.

The Bureau added interest and penalty to the 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, 2019, 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 February 8, 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:

TAX	PENALTY	INTEREST	TOTAL
$11,130	$13,250	$295	$24,675
		Less Payments Received:	($10,500)
		Total Now Due:	$14,175

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 _____ 2019.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019, 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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