

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-028-540-416
[Redacted]	)	
	)	
Petitioner.	)	DECISION
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On May 21, 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, and interest for the period January 1, 2015, through December 31, 2017, in the total amount of \$6,433. After the Notice was issued, the Bureau found multiple items that were properly taxed. Therefore, the Bureau determined an adjustment was appropriate and modified the Notice (Modified Notice).

On May 24, 2018, Petitioner filed a timely appeal and petition for redetermination of the Modified Notice. The Commission sent Petitioner hearing rights letters dated October 1, 2018 and November 8, 2018. However, Petitioner has not requested a hearing or provided additional documentation for the Commission’s consideration.

The Commission reviewed the audit file and upholds the Modified Notice for the reasons that follow.

**Background and Audit Findings**

Petitioner is a retail and wholesale bakery that sells food, beverages and other merchandise in [Redacted] Idaho. The Bureau conducted a routine comprehensive audit to determine Petitioner’s compliance with Idaho sales tax and use tax laws.

The Bureau reviewed Petitioner’s QuickBooks sales entries and sales tax returns for the entire audit period. The Bureau compared the taxable sales in QuickBooks to the corresponding net taxable sales amount shown on Petitioner’s sales tax returns. The Bureau found a variance

between these two items and held the difference taxable. After the Notice was issued, the Bureau identified \$62 in sales tax that Petitioner collected from its customers and remitted to the Commission. The Bureau then modified the Notice reducing the sales tax liability from \$5,510 to \$5,448.

The Bureau also reviewed Petitioner's 2016 ordinary expenses and held the non-taxed purchases taxable. The Bureau identified the error rate for this sample period and applied it over the remaining audit period. After the Notice was issued, the Bureau identified three equipment purchases for which \$280 of sales tax was already paid. The Bureau then modified the Notice reducing the use tax liability from \$573 to \$293. Petitioner did not protest the use tax findings. Therefore, this portion of the audit will not be addressed further.

#### **Petitioner's Protest**

According to Petitioner, the Bureau's 2017 calculation of total sales is overstated. Petitioner also claims the QuickBooks net sales includes sales tax collected from customers.

#### **Relevant Tax Code and Analysis**

The sale of tangible personal property is subject to sales tax unless an exemption applies, section 63-3619, Idaho Code. Section 63-3624, Idaho Code, authorizes the Commission to enforce the administration of sales tax and use tax requirements, and 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.

Petitioner contends the Bureau's 2017 calculation of total sales was overstated for two reasons. First, Petitioner claims it recorded a bank transfer in the amount of \$11,000 incorrectly

as a sale in QuickBooks. The Commission reviewed Petitioner's sales entries in QuickBooks and found no corresponding sales entries to corroborate Petitioner's claim. Therefore, the Commission finds the Bureau did not include this amount in taxable sales. Second, Petitioner claims its QuickBooks numbers were unreliable because it added or subtracted sales each month to reconcile its accounts. However, Petitioner did not provide any additional documentation to support this claim.

Petitioner further contends the QuickBooks total sales includes sales tax collected from customers. Petitioner divided the total sales collected from its customers by 1.06 to derive the taxable sales at the end of each month and then remitted sales tax to the Commission on this calculation of taxable sales. Petitioner asks the Commission to accept this method for collecting and remitting taxes. However, Petitioner's method is in direct conflict with Idaho law and rules. Retailers are required to display the amount of tax collected separately from the list price, marked price, the price advertised in the premises or other price on the sales slip or other proof of sale, *See* IDAPA 35.01.02.068.06. In this case, Petitioner did not separately state the amount of tax due or collect tax on the majority of its sales. Therefore, the Commission finds Petitioner had a duty to collect and remit sales tax on its sales and is liable for tax on the variance between the non-taxed sales and the sales tax returns, as modified by the Bureau.

### **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." *See 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 Modified Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission upholds the Modified Notice.

Absent information to the contrary, the Commission finds the Modified Notice prepared by the Bureau to be an accurate representation of Petitioner's sales tax and use tax liability for the period January 1, 2015, through December 31, 2017.

The Bureau added interest to the sales tax and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per sections 63-3045 and 3046, Idaho Code, and has updated interest accordingly. Interest is calculated through February 28, 2019, and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code until paid. No penalty was assessed.

THEREFORE, the Notice as Modified, dated May 21, 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$6,083	\$506	\$6,589

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioner's right to appeal this decision is enclosed.

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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