

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 1-270-544-384
 [Redacted],)
)
 Petitioner.) DECISION
)
 _____)

On October 25, 2018, 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 April 1, 2015, through March 31, 2018, in the total amount of \$53,209.

On December 10, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission held an informal hearing with Petitioner on July 2, 2019.

After the informal hearing, Petitioner provided additional documentation. The Commission reviewed this documentation and modified the Notice, as set forth herein.

Background and Audit Findings

Petitioner is a custom meat processor located in [Redacted], Idaho that processes customer owned meat. The Bureau conducted a routine comprehensive audit of Petitioner’s business to determine its compliance with Idaho sales tax and use tax laws and rules.

The Bureau found Petitioner was not permitted since its inception in 2010. The Bureau also found Petitioner had non-taxed processing fees and asset deletions subject to \$48,253 in sales tax. The Bureau allowed a credit for sales taxes that Petitioner paid to vendors for the items it resold to customers in the amount of \$1,578. These items included: ingredients that went into food, cutting and wrapping supplies, and product packaging. The Bureau also found non-taxed purchases, asset additions, and donations subject to \$3,015 in use tax.

Protest

Petitioner protests the sales tax liability, indicating its previous accountant explained that it should collect no sales tax from its customers.

Analysis

In Idaho, the sale of tangible personal property is subject to sales tax, unless an exemption applies, Idaho Code § 63-3619. The term sale is defined in Idaho Code § 63-3612. This section of the law states in relevant part:

63-3612.SALE. (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

IDAPA 35.01.02.029 further explains the production, fabrication and processing of tangible personal property and states in pertinent part:

029. Producing, Fabricating, And Processing (Rule 029).

01. In General. Tax applies to charges for producing, fabricating, processing, printing, imprinting, or the engraving of tangible personal property for a consideration, whether or not consumers furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, imprinting, or engraving.

a. Example 1: An owner purchases cabinets from a cabinetmaker to be made according to specifications furnished by the owner. The cabinetmaker delivers the cabinets to the owner who installs them himself. A sales tax will be collected by the cabinetmaker from the owner measured by the entire sales price.

b. Example 2: An owner purchases material, on which he pays a sales tax, which he delivers to a cabinetmaker. The cabinetmaker uses this material to manufacture cabinets for the owner according to specification. These cabinets are delivered to the

owner and an agreed price is paid for the work done by the cabinetmaker. A sales tax will be collected from the owner, measured by the entire price charged by the cabinetmaker.

c. Example 3: An individual takes a plaque, on which sales tax has been paid, to an engraver and requests the plaque be engraved with an inscription. The total price paid for the engraving shall be subject to tax.

d. Example 4: A club purchases trophies from a retailer and requests that the trophies be engraved with individual names. The trophies are engraved and delivered for an agreed price. The measure of the sales tax is the price of the trophies plus the engraving charge.

e. Example 5: An individual takes a beef to a packing plant and requests that the meat be processed by cutting, wrapping, and freezing the meat to the purchaser's specification. The total price paid for this processing shall be subject to sales tax.

f. Example 6: A hunter takes a deer to a business which processes smoked meats. Although the material actually consumed in the smoking process may be minimal, the entire price paid for this processing is subject to sales tax.

The Commission finds the Bureau properly assessed Petitioner for the sales tax due on the entire price that its customers paid for meat processing.

The Commission found a purchase of swine from the [Redacted] Livestock Commission Co. that the Bureau incorrectly held taxable. Per Idaho Code § 63-3622MM, an exemption exists for the sale, purchase, or use of livestock when sold at a livestock market. This law states in applicable part,

63-3622MM. LIVESTOCK SOLD AT LIVESTOCK MARKETS.

(1) There are exempted from the taxes imposed by this chapter, the sale, purchase or use of livestock when sold at a livestock market.

(2) As used in this section, the term "livestock market" shall mean:

(a) A "public livestock market" as defined in section [25-1721](#), Idaho Code, and holding a charter issued by the Idaho department of agriculture pursuant to [chapter 17, title 25](#), Idaho Code; and

(b) Those organizations expressly exempted from the chartering requirement by section [25-1722](#), Idaho Code.

(3) As used in this section, the term "livestock" shall mean cattle, calves, sheep, mules, horses, swine or goats.

Since an exemption applied to Petitioner's purchase of swine from a livestock market, the

Commission modified the Notice to exclude this purchase in the amount of \$150.

Additionally, the Commission reviewed the documentation that Petitioner provided after the informal hearing. The Commission found an additional adjustment was appropriate and modified the Notice, reducing the tax liability by \$475.

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)). To meet this burden, the Commission required Petitioner to provide adequate evidence to establish that the amount asserted in the Notice, as modified, is incorrect. Here, Petitioner did not provide adequate evidence to meet this burden. As a result, the Commission upholds the Notice as modified.

Absent information to the contrary, the Commission finds the Modified Notice to be an accurate representation of Petitioner’s sales tax and use tax liability for the period April 1, 2015, through March 31, 2018.

The Bureau added interest to the sales tax and use tax deficiency. The Commission reviewed this addition and found it to be appropriate per Idaho Code § 63-3045, and updated interest accordingly. Interest is calculated through January 31, 2020 and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6), until paid.

THEREFORE, the Modified Notice 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> |
|------------|-----------------|--------------|
| \$49,206 | \$6,152 | \$55,358 |

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

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____
20_____, 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.

[Redacted]

[Redacted]

[Redacted]

Copy to:

[Redacted]

[Redacted]

[Redacted]

[Redacted]