

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [REDACTED]) DOCKET NO. 1-691-564-032
 [REDACTED])
)
 _____ Petitioner.) DECISION

On May 24, 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 April 1, 2014, through March 31, 2017, in the total amount of \$12,732.

On July 23, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on February 14, 2019. The Commission, having reviewed the audit file, Petitioner’s protest, and information obtained at the hearing, upholds the Notice for the reasons that follow.

Background and Audit Findings

During the audit period, Petitioner operated two [REDACTED] shops in the Treasure Valley. The Bureau conducted a comprehensive audit to determine Petitioner’s compliance with Idaho sales tax and use tax laws. Of the \$11,036 tax liability asserted by the Bureau, \$945 is use tax due on nontaxed purchases, and \$10,091 is sales taxes collected by Petitioner but not remitted to the Commission.

Petitioner’s Protest

Petitioner’s protest is brief, and is restated here in its entirety:

Tax Commission:

After reviewing the information from this Audit. I would like to ask for an informal meeting or hearing with a representative.

This is my first business, and also my first audit. I would like to clear this up, and move on. I had a manager who used to work for me. But she no longer works for me. I feel that she did not report things correctly. But would love to meet with the tax commission to fix the problem.

Thank you very much for your time.

Respectfully – [REDACTED]

During the informal hearing, Petitioner stated he also disputed use tax assessed on his purchase of exterior signs and patio furniture. Petitioner claimed he had invoices to document sales tax was paid at the time he purchased these items; however, no invoices were provided to the Commission for review.

Relevant Tax Code and Analysis

Purchases of tangible personal property in Idaho are subject to tax unless an exemption applies. Idaho Code § 63-3619.

Idaho Code § 63-3621 imposes use tax on all tangible property brought into Idaho unless an exemption applies. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho. If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state. Idaho Code § 63-3621.

Idaho Code § 63-3623A identifies all moneys collected by retailers in compliance with Chapter 36, Title 63, Idaho Code, as state money and goes on to state that “[s]uch money shall not, for any purpose, be considered to be a part of the proceeds of the sale to which the tax relates.”

Petitioner provided sales and sales tax information from his point-of-sale system to the Bureau for the audit period. These records indicated that during the audit period, \$99,418.88 of sales tax was collected. During this same period, Petitioner submitted handwritten sales and use tax returns which reported \$89,328.11 in sales tax to the Commission. Petitioner paid this lesser amount with the returns. Of the \$10,091 tax deficiency, \$2,463 is due to taxable sales erroneously

reported on Petitioner's sales and use tax returns as "nontaxed sales", and the remaining \$7,628 is attributed to sales not reported on Petitioner's returns at all.

Petitioner did not offer a clear explanation for the discrepancy. Petitioner suggested to the Commission that he had a manager who was not filing returns correctly; however, the Commission noted that Petitioner's signature appears on all the returns filed during the audit period. During the informal hearing, Petitioner stated his point-of-sale system was not programmed to charge the correct amount of sales tax on purchases made by customers; however, the Commission does not believe this explanation is supported by Petitioner's other records and the returns filed with the Commission.

The Bureau calculated the sales tax liability using Petitioner's own business records, and Petitioner does not dispute the sales shown in those records. The Commission finds that not all sales tax collected in Petitioner's businesses was remitted to the Commission as required by Idaho Code § 63-3623A, and upholds the sales tax assessed by the Bureau.

The Bureau assessed use tax for several purchases made by Petitioner during the audit period. During the informal hearing, Petitioner stated he paid sales tax at the time of purchase on some of the items held subject to use tax, such as exterior signs and patio furniture used in the business. The Commission requested documentation of the sales tax paid on these items; however, Petitioner did not provide any records for the Commission to review. Therefore, the Commission upholds the use tax assessed by the Bureau.

Conclusion

On appeal, a deficiency determination issued by the Tax 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 Tax 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 and use tax liability for the period April 1, 2014, through March 31, 2017.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, and found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated May 24, 2018, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL. The Notice of Deficiency Determination has been paid in full by Petitioner; therefore, no demand for payment is made or necessary.

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 _____, 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:

██████████
██
██

Receipt No.
