

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

In the Matter of the Protest of )

[Redacted], )

Petitioner. )

---

DOCKET NO. 0-367-147-008

DECISION

On February 8, 2019, 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 of January 1, 2014, through December 31, 2016, in the total amount of \$126,486.

Petitioner filed a timely appeal and petition for redetermination of this Notice, indicating that it wanted to provide additional information. Petitioner then provided the Bureau with information that it had not previously provided during the audit. The Bureau reviewed this information and modified the Notice (Modified Notice) to \$86,621.

Petitioner protested the audit results found in the Modified Notice. Therefore, the Bureau forwarded Petitioner’s protest to the Appeals Unit.

At Petitioner’s request, the Commission held an informal hearing on December 2, 2019. During this hearing, the Commission asked for, and Petitioner agreed to provide, documentation showing taxes were properly paid on protested items. One of the documents specifically requested was a vehicle identification number (VIN) for a vehicle that was held taxable in the audit.

On December 5, 2019, Petitioner provided the Commission with the VIN that it had not previously provided the Bureau during the audit. Using the VIN, the Commission was able to confirm with the Idaho Department of Transportation that tax was paid on this vehicle. Therefore, the Commission adjusted the Modified Notice, reducing Petitioner’s liability by \$604.

After reducing the Modified Notice by \$604 and receiving no additional documentation from Petitioner to support further adjustments, the Commission reviewed the audit file and upholds the remainder of the Modified Notice.

### **Background and Audit Findings**

Petitioner is a contractor and retailer located in [REDACTED], Idaho. Petitioner primarily installs and repairs home automation services, consisting of audio, video, and security systems.

The Bureau conducted a detailed comprehensive audit of Petitioner's business to determine its compliance with Idaho's sales tax and use tax laws and rules. The Bureau found that a large portion of Petitioner's sales involved real property improvements. These real property improvements involved structural wiring and the installation of speakers in ceilings and walls, in both new and existing homes. The Bureau found that Petitioner was a consumer of these materials.

On the other hand, some of Petitioner's sales involved retail sales of tangible personal property. Retail sales of tangible personal property included sales of entertainment system components like televisions, receivers, speakers, and modems. Petitioner collected no tax on the majority of these retail sales. The Bureau reviewed Petitioner's nontaxed retail sales and identified \$76,684 in sales tax that was due.

In a couple of instances, Petitioner charged its customers sales tax on retail sales of tangible personal property. The Bureau reviewed Petitioner's taxed sales and identified \$2,351 in sales tax that Petitioner collected but did not remit to the Commission.

The Bureau also reviewed Petitioner's purchases and found ordinary purchases subject to \$553 in use tax, asset purchases subject to \$604 in use tax, and a credit totaling \$5,805 for taxes that Petitioner paid on materials purchases that it resold to customers.

## Petitioner's Protest

In its protest, Petitioner disagreed with the method the Bureau used to tax missing invoices, materials, and purchases from local vendors.

### Relevant Tax Code and Analysis

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

The term "retail sale" is defined in Idaho Code § 63-3609 and states in relevant part:

**63-3609.RETAIL SALE -- SALE AT RETAIL.** The terms "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section [63-3612](#)(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

IDAPA 35.01.02.012 (Rule 12) explains the tax consequences for contractors improving real property. This rule states in pertinent part:

#### **012. Contractors Improving Real Property (Rule 012).**

Sections 63-3609(a), 63-3621, 63-3615(b), 63-3622B, Idaho Code **01. In General.** This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable.

**a.** Contractors include bricklayers, plumbers, heating specialists, painters, sheet metal workers, carpet layers, electricians, land levelers, well drillers, landscapers, and all others who do contract work on real property. Unless these persons are employees

of a contractor, they are acting as contractors and are consumers just as other contractors.

**b.** Persons doing residential repairs, such as plumbers and electricians, as well as those who both sell and install carpet, also are contractors improving real property. Such contractors are defined as the consumers of the materials they install and are required to pay sales or use tax on their cost for the materials. They do not charge sales tax to their customers unless they make a sale of materials only, with no installation.

**c.** The terms “contractor” and “subcontractor” are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property.

Petitioner is a contractor when it installs structural wiring and entertainment system components into real property. As a contractor, Petitioner is the end consumer of the materials that it uses in these real property improvements.

In some cases, contractors may also be retailers. The term retailer is defined in IDAPA 35.01.02.018 (Rule 18) and states in applicable part:

**018. Retailer Defined (Rule 018).**

Sections 63-3610 and 63-3611, Idaho Code

**01. Retailer.** The term retailer includes a person doing a regularly organized retail business in tangible personal property and defined services and selling to the user or consumer, not for resale.

Petitioner is a retailer when it sells entertainment system components like televisions, receivers, speakers, and modems to customers that it does not install in real property. As a retailer, Petitioner is required to collect sales tax from its customers and remit it to the Commission. *See* Idaho Code §§ 63-3619 and 3623A. In this case, Petitioner remitted none of the sales tax that it collected.

Additionally, retailers and consumers of tangible personal property are required to keep adequate records to verify the amount of taxes that are due. Idaho’s record requirements are set forth in Idaho Code § 63-3624. This section of the law states in relevant 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.

(e) The state tax commission, or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

In Petitioner's protest, it claims that the Bureau taxed all of its missing invoices at 100%. The Bureau held a few undocumented transactions 100% taxable; but in most cases, the Bureau was able to use the information that Petitioner provided to calculate a taxable percentage for Petitioner's undocumented transactions.

For instance, the Bureau found that Petitioner had 654 residential jobs during the audit period. Petitioner was only able to provide the Bureau with supporting documentation for 157 residential quotes. Using the documentation that Petitioner provided for the 157 residential quotes, the Bureau was able to calculate a percentage of taxable and nontaxable sales. The Bureau found 60% of the residential quotes were taxable sales of tangible personal property, and the remaining 40% of residential quotes consisted of materials that Petitioner consumed in real property improvements or charged for installation labor. The Bureau applied the 60/40 ratio to the undocumented transactions and held 60% of the undocumented transactions taxable. The Commission finds the Bureau used the best information available to calculate the taxability of Petitioner's missing invoices.

Petitioner also claimed in its protest that the Bureau held materials taxable twice, indicating materials were taxed on both vendor invoices and customer invoices. Petitioner further believes that its customers should not pay tax on these materials.

The Commission asked Petitioner to provide a list of the transactions that were double taxed. Rather than providing this list, Petitioner responded to the Commission's request stating in part:

“It seems to me that ANY Sales Tax charged on the Invoices to Customers is Double Tax. USE TAX should be charged on all Purchases from Vendors, we agree. Once Sales and Use Tax is paid on the purchases from Vendors he has paid all Sales and Use Tax.

**[Redacted]** doesn't sell anything. They install only. They are the end user and they shouldn't be charging sales tax to any of their customers. The materials are just part of the installation job, they are not separately billed to the customer.”

Since Petitioner is a contractor and a retailer, it may pay tax on all of its materials at the time the materials are purchased. If Petitioner pays tax on its materials at the time of purchase and consumes these materials in real property, then Petitioner has no further tax obligations.

If Petitioner pays tax on materials at the time of purchase and then sells the materials to its customer, it must collect sales tax from its customer. Petitioner may then request a refund from the Commission for the taxes it paid at the time it purchased the materials or it may claim a credit for the taxes paid on its sales and use tax returns.

Petitioner may also choose to purchase all of its materials tax exempt. If Petitioner does this, it must keep record of all the materials that it withdraws from inventory and then pay use tax on the price of the material when it files sales and use tax returns. Petitioner must also keep record of all the materials it resells to customers and remit all of the taxes that are collected to the Commission.

In Petitioner's case, the Bureau found that Petitioner typically pays tax on its materials at the time of purchase. Since Petitioner paid tax on its materials at the time of purchase, the Bureau allowed a credit for materials that Petitioner resold to customers, in the amount of \$5,805. Without any documentation to support Petitioner's claim that materials were double taxed in the audit, the Commission finds the Bureau's credit calculation of materials to be accurate.

Lastly, Petitioner found the Bureau's request for records showing taxes were properly paid to local vendors to be unreasonable. Taxpayers are required to provide the Commission with the records that are necessary to determine the correct tax liability. If the request for information is applicable to the audit issue, then it is considered relevant. See *IDAPA 35.02.01.201.01*. The Commission finds the Bureau's records request was necessary for the Bureau to determine Petitioner's correct tax liability. Since Petitioner did not provide documentation showing taxes were properly paid on some of its local purchases, the Commission upholds their taxability.

### **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. As a result, the Commission upholds the adjusted Modified Notice.

Absent information to the contrary, the Commission finds the adjusted Modified Notice to be an accurate representation of Petitioner's sales tax and use tax liability for the period January 1, 2014, through December 31, 2016.

The Bureau added interest to the sales tax and use tax deficiency. The Commission reviewed this addition and finds it is appropriate per section 63-3045, Idaho Code, and updated interest accordingly. Interest is calculated through July 31, 2020 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 adjusted 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>
\$73,784	\$16,489	\$90,273

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 \_\_\_\_\_, 2020.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 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.

---