

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

████████████████████,

Petitioner.

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DOCKET NO. 0-662-751-232

DECISION

On February 14, 2020, the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to ██████████ (Petitioner), proposing sales tax, use tax, penalty, and interest for the period of July 1, 2016, through December 31, 2018, in the total amount of \$42,921.

Petitioner paid the tax due in the amount of \$26,911 but requested a waiver of penalty and interest. The Bureau deemed Petitioner’s request was a valid protest and forwarded it to the Appeals Unit (Appeals) for review.

After receiving Petitioner’s protest, Appeals sent Petitioner a hearing rights letter. Petitioner acknowledged receipt of this letter but requested no hearing and provided no additional information for the Commission’s review.

The Commission reviewed the audit file and upholds the Notice, as stated herein.

Background and Audit Findings

Petitioner is a wholesale and retail used car dealership located in ██████████, Idaho. In 1995, Petitioner obtained a sales and use tax permit with the Commission. To determine Petitioner’s compliance with sales tax and use tax laws and rules, the Bureau conducted a detailed comprehensive audit of Petitioner’s business.

In 2018, Petitioner lost all of its paper sales records in a fire. After the fire, Petitioner maintained no paper sales records. Instead, Petitioner maintained electronic records for the majority of its sales. The Bureau analyzed Petitioner’s electronic records for the audit period, in addition to the

sales and titling reports (Reports) that Petitioner filed with the Idaho Transportation Department (ITD). The Bureau determined that Petitioner's electronic records and the ITD Reports provided enough information to conduct a comprehensive audit.

During the audit, the Bureau performed a sales tax reconciliation, comparing Petitioner's electronic sales records, ITD Reports, and the taxable sales Petitioner reported to the Commission in sales and use tax returns for the relevant periods. The Bureau found that none of the taxable sales in Petitioner's electronic records were reported to the Commission. The Bureau also found that Petitioner reported more sales to ITD than it recorded electronically. When asked about this discrepancy, Petitioner explained that some sales were created "manually", and it kept no electronic record of these manual sales.

After completing the reconciliation, the Bureau found that Petitioner collected \$26,615 in sales tax from its customers that it did not remit to the Commission. The Bureau also identified a few taxable purchases, resulting in use tax due in the amount of \$296.

Petitioner does not dispute the tax due as shown on the Notice but disagrees with the fraud penalty and interest.

Petitioner's Protest

Petitioner provided no legal or factual reason for its protest but requests that the Commission waive the penalty and interest, indicating that it cannot pay this amount.

Relevant Tax Code and Analysis

In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies. *See* Idaho Code § 63-3619.

A retailer has a responsibility to remit all sales tax collected to the state of Idaho. Idaho Code 63-3623A states in pertinent part:

63-3623A.TAXES AS STATE MONEY. All moneys collected by retailers in compliance with this chapter shall, immediately upon collection, be state money and every such retailer shall hold such money for the state of Idaho and for payment to the state tax commission in the manner and at the times required in this chapter. Such money shall not, for any purpose, be considered to be a part of the proceeds of the sale to which the tax relates and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the retailer to any creditor other than the state tax commission.

The failure to remit taxes collected from customers may constitute fraud. The fraud penalty is set forth in Idaho Code § 63-3046 which states in applicable part:

Penalties and additions to the tax in case of deficiency.

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

IDAPA 35.02.01.420.01 provides guidance to determine whether a fraud penalty applies:

420. Fraud Penalties (Rule 420). Section 63-3046(b), Idaho Code.

01. In General. In determining fraud penalties, the Tax Commission shall review all facts and circumstances surrounding preparation of a taxpayer's return including all of the following:

- a. Public and private statements regarding income or sales of the taxpayer;
- b. Business and financial practices of the taxpayer;
- c. Taxpayer's knowledge of principles of finance, accounting, law, or taxation;
- d. Objective and subjective evidence showing or tending to show intent to evade payment of taxes.

Approximately 99 percent of the tax in the Notice is attributable to discrepancies in the sales tax reconciliation. Petitioner's financial transactions, records, and tax returns show it made a conscious decision to retain a substantial portion of the sales tax collected. This deception occurred for a significant length of time, with variances found in each month within the audit period. Petitioner's actions demonstrate an intent to evade paying the taxes it collected. As a result, the Commission upholds the fraud penalty proposed by the Bureau.

The Idaho Supreme Court addressed whether a taxpayer was required to pay interest in *Union Pacific Railroad Company v. State Tax Commission*, 105 Idaho 471, 670 P.2d 878 (1983). The Court stated, “We agree with the State that I.C. § 63–3045(c) is clear and unequivocal when it states that “interest ... shall be assessed” and “shall be collected.” This section is not discretionary, but rather, it is mandatory.” The Commission reviewed the addition of interest and finds it is appropriate.

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)). Petitioner has a duty to maintain all records that are necessary to determine the correct tax liability under IDAPA 35.02.01.201.

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 Notice with updated interest.

The interest is calculated through August 15, 2020 and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code, until paid.

THEREFORE, the Notice dated February 14, 2020, 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:

	<u>TAX</u>	<u>INTEREST</u>	<u>PENALTY</u>	<u>TOTAL</u>
	\$26,911	\$2,910	\$13,456	\$43,277
Payment				(26,911)
TOTAL DUE				<u>\$16,366</u>

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:

Receipt No.


