

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

In the Matter of the Protest of

[Redacted]  
[Redacted]

Petitioner.

DOCKET NO. 0-827-062-272

DECISION

On March 27, 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 use tax and interest for the period June 1, 2011, through May 31, 2018, in the total amount of \$7,752.

On May 29, 2019, [Redacted] filed a timely appeal and petition for redetermination of the Notice on behalf of Petitioner. The Commission mailed hearing rights letters to Petitioner's representative on October 21, 2019, and November 21, 2019. Petitioner's representative did not respond to either letter, so the Commission mailed a hearing rights letter to [Redacted] on December 20, 2019 but received no response. Having reviewed the audit file and protest, the Commission upholds the audit findings for the reasons that follow.

**Background and Audit Findings**

Petitioner is a Limited Liability Company (LLC) which operates a nail salon in [Redacted], Idaho, and has never held a sales tax permit. The Bureau conducted an audit of Petitioner's business to determine its compliance with Idaho sales tax and use tax laws, and determined Petitioner owed use tax on untaxed purchases during the audit period.

**Petitioner's Protest**

[Redacted] filed a protest on behalf of Petitioner, contending she took over the business in 2016. [Redacted] protests the portion of the Notice attributed to years 2011 through 2015, asserting she is not responsible for the business liabilities during that period.

### Relevant Tax Code and Analysis

Idaho imposes a tax on storage, use, or other consumption of tangible personal property brought into the state, unless an exemption applies. Idaho Code §63-3621. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho.

Petitioner initially filed with the Idaho Secretary of State as an LLC on April 21, 2010. On its initial filing, [Redacted] was identified as both member and registered agent of the LLC. All filings submitted by Petitioner to the Idaho Secretary of State between 2010 and February 23, 2016, identified [Redacted] as member and registered agent of the LLC. On April 12, 2016, the LLC filed an Amendment to Certificate of Organization which deleted [Redacted] as a member and added [Redacted]. On April 13, 2016, Petitioner filed a Statement of Change that removed [Redacted] as the registered agent and identified [Redacted] as both registered agent and managing member. Petitioner filed an Annual Report Form on April 6, 2017, which identified [Redacted] as the registered agent, and [Redacted] as manager of the LLC. An Annual Report Form filed on May 3, 2018, listed [Redacted] as both manger and registered agent. The LLC did not file any forms in 2019; a Reinstatement Annual Report filed on January 6, 2020, listed [Redacted] as both manager and registered agent [Redacted] and [Redacted] are mother and daughter, respectively.

Petitioner's business income tax returns filed for calendar years 2009 through 2016 reflect [Redacted] as president and sole shareholder of the LLC. The LLC did not file an income tax return in 2017, and the business income tax return filed for 2018 identifies [Redacted] as the sole owner of the LLC. Additionally, [Redacted] filed an individual income tax return for calendar year 2017 which listed [Redacted] as a dependent, and [Redacted] 2017 and 2018

individual income tax returns included income from Petitioner reported on Forms 1099. [Redacted] [Redacted] filed an individual income tax return for calendar year 2016 which included a Schedule C for Petitioner's business but does not reference the LLC specifically. The returns filed by [Redacted] [Redacted] for calendar years 2017 and 2018 reflect income from the LLC, as reported on Schedule E.

A limited liability company is an entity distinct from its member or members and has perpetual duration. Idaho Code §§30-25-108 and 30-6-104.

A successor to a business can be liable for amounts owed by its predecessor unless the successor takes certain precautions. Idaho Code §63-3628. Specifically, the successor must make a written inquiry of the Commission as to any sales tax or use tax liability of the business they are purchasing. IDAPA 35.01.119. During the audit, [Redacted] told the Bureau she purchased Petitioner's business from her mother, [Redacted], in 2016. The Bureau requested a copy of the purchase agreement on several occasions, but no documentation was ever provided. After the Notice was issued, [Redacted] communicated to the Bureau that Petitioner's business was transferred into her name as a gift from [Redacted] but provided no documentation to support this assertion.

Petitioner is an entity entirely separate from either [Redacted] or [Redacted]. As the entity shown on the Notice prepared by the Bureau, Petitioner is solely responsible for the audit liability. There is insufficient evidence to conclude that Petitioner's business operations were sold by [Redacted] to [Redacted], and even if such evidence was provided, [Redacted] did not relieve herself of any successor's liability as provided for in Idaho Code or administrative rule.

## 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 will uphold the Notice.

The Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s use tax liability for the period June 1, 2011, through May 31, 2018.

The Bureau added interest to the use tax deficiency. The Commission reviewed that addition, found it to be appropriate per Idaho Code section 63-3045, and updated interest accordingly. Interest is calculated through April 30, 2020, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated March 27, 2019, 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>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$6,699	\$0	\$1,340	<u>\$8,039</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

---

COMMISSIONER

## 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]  
[Redacted]  
[Redacted]  
[Redacted]

Receipt No.

---

---