

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

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Petitioner.

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DOCKET NO. 0-029-811-712

DECISION

■■■■ ■■■■ ■■■■ now known as ■■■■■ (■■■■ and ■■■■ ■■■■ ■■■■ ■■■■ and ■■■■ ■■■■ ■■■■ ■■■■ now known as ■■■■■ (■■■■) (collectively referred to herein as Petitioners) protested the Notice of Deficiency Determination (Notice) dated October 31, 2023, issued by the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Tax Commission) for the period December 1, 2016 through July 31, 2017 (Audit Period). The Tax Commission, having reviewed the matter, hereby upholds the Notice issued by the Bureau for the reasons stated below.

BACKGROUND

Petitioners are State of Utah limited liability corporations both managed and controlled by ■■■■ ■■■■■ The principal business of both ■■■■ and ■■■■ was the sale of ■■■■ equipment and installation. Petitioners also service and repair the equipment they install. Neither Petitioner has registered with the Idaho Secretary of State and do not have Idaho Seller’s Permits.

The Bureau acquired invoices from Petitioners’ Idaho customers, which showed Petitioners charged and collected sales tax. The Bureau contacted Petitioners and inquired about the sales tax collected as the Bureau had no record that any Idaho sales tax had been paid.

¹ ■■■■ was previously known as ■■■■■ ■■■■ until an official name change on January 7, 2021. ■■■■ ■■■■ has the dba ■■■■ ■■■■ ■■■■ ■■■■ was previously known as ■■■■ ■■■■ ■■■■ ■■■■ until an official name change on January 7, 2021. ■■■■ is no longer an active business entity.

Petitioners responded, stating neither entity has an Idaho Sales and Use Tax permit. Later it was alleged by Petitioners' representative that the tax shown on Petitioners' invoices was for Utah sales tax. However, Petitioners were never able to provide any documentation to support that Utah sales tax was paid.

The Bureau issued a Notice of Deficiency Determination (Notice) on October 31, 2023, for the total amount of \$148,688.00, including penalty and interest, which Petitioners protested. Petitioners argue they are not retailers in Idaho. Instead, they believe they are exempt from paying Idaho sales and use tax because they argue they qualify for the "occasional sale exemption under Idaho Code section 63-3622K. The Bureau acknowledged Petitioners' protest but disagree with their conclusion that they are exempt from paying sales and use tax as occasional sellers. This matter was assigned from the Bureau to the Tax Commission's Appeals Unit (Appeals) for administrative review of the protest.

Appeals sent Petitioners a letter informing them of the options available for redetermining a Notice. Petitioners responded and scheduled an informal hearing, which was held on December 18, 2024. During the informal hearing Petitioners argued that they had no requirement to collect Idaho tax. They also reiterated their claim that they qualified for an occasional sales exemption. Further, they argue that the tax that was reflected on the invoices was Utah sales tax.

After the hearing, Appeals contacted Petitioners, through [REDACTED] [REDACTED] to see if he could show Petitioners paid Utah sales tax. Mr. [REDACTED] related that he thought he could do that. At a later date, Mr. [REDACTED] said he found his files but was unable to access them. When Appeals checked back with Mr. [REDACTED] about his progress he stated he had not made any progress. Ultimately, Mr. [REDACTED] related to Appeals, that the Tax Commission would just have to decide the case with the information that is available.

LAW AND ANALYSIS

A. Petitioners made Idaho taxable sales to customers located in Idaho.

Idaho Code section 63-3623A, states:

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.

Invoices that Petitioners' customers provided showed sales tax was charged by Petitioners.

Such sales tax was never remitted to the State of Idaho. The customer that purchased the [REDACTED] equipment paid sales tax to Petitioners according to Petitioners' invoices. Therefore, it is Petitioners' responsibility to pay the sales tax that they collected over to Idaho.

Petitioners were regarded as Idaho retailers under Idaho law. Idaho Code section 63-3611(3), states that the term "retailer engaged in business in this state" includes any of the following: "(d) Any retailer engaging in any activity in connection with servicing or installing tangible personal property in this state." In the case at hand, Petitioners were installing [REDACTED] equipment in Idaho business locations.

Idaho classifies [REDACTED] equipment as tangible personal property. The [REDACTED] equipment and the installation of the [REDACTED] equipment are taxable in the State of Idaho. Further, the [REDACTED] equipment at issue in this case were drop shipped from the manufacturer in Florida to the Idaho customer's location in Idaho. The equipment was installed in a [REDACTED] located in Idaho.

Petitioners made Idaho sales for which tax is due. The facts show that Petitioners made sales of tangible personal property that was drop shipped into Idaho and installed in Idaho businesses. Further, Petitioners invoiced their customers for sales tax that was never paid to Idaho.

As such, the tax that Petitioners charged to its customers is due and owing to the State of Idaho from Petitioners.

B. Petitioners did not provide any documentation to show that tax was paid to Utah.

Petitioners admitted that they never had any Idaho Sales Tax permits and that they did not pay sales tax to Idaho. Petitioners ultimately alleged that they collected Utah tax from their customers and that the tax indicated on their invoices was for Utah tax that was charged. However, Petitioners provided no documentation to show that they paid any tax to Utah.

C. Petitioners actions taken in Idaho qualify them as retailers under Idaho Law.

Petitioners protested the Notice of Deficiency Determination and argued that [REDACTED] and [REDACTED] are separate legal entities, and neither was a retailer in Idaho during the Audit Period. The Tax Commission does not argue that the two companies are not separate legal entities and acknowledges that both [REDACTED] and [REDACTED] have protested the Notice.

Under Idaho Law, Petitioners both qualify as retailers because they sold and installed [REDACTED] equipment in Idaho. Idaho Code section 63-3610 defines retailer as follows:

- a. Every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.
- b. Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.
- c. Every person making more than two (2) retail sales of tangible personal property during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, **or every person making fewer sales who holds himself out as engaging in the business of selling such tangible personal property at retail** or who sells a motor vehicle...

Petitioners argue they only made one sale a year. However, while Petitioner may have only entered Idaho once to install the [REDACTED] [REDACTED] equipment, in actuality, Petitioners sold several products to their

customers in conjunction with the installation of the [REDACTED] [REDACTED] equipment. Petitioners' customers have several invoices to reflect such sales. Further, Petitioner's invoices had many line items on them with multiple pages indicating multiple sales that took place.

Regardless of the amount of sales that Petitioners made, Petitioners qualified as retailers under Idaho Law. In determining whether Petitioners were retailers, their actions within the State of Idaho are examined. Through their actions, they held themselves out as engaging in the business of selling tangible personal property at retail in Idaho. Petitioners sold [REDACTED] [REDACTED] equipment and installed products within locations of their Idaho customers. As such, by their conduct they are retailers under Idaho Law.

D. Petitioners do not qualify as occasional sellers under Idaho Law.

Petitioners claim that they should qualify as occasional sellers and therefore not have to pay tax because they have made less than two sales per year. However, the occasional sale exemption is not available if you hold yourself out as engaging in the business of selling tangible personal property at retail, as Petitioners do. As set forth above, Petitioners' conduct makes them retailers under Idaho Law.

Idaho Code Section 63-3622K sets forth who qualifies as an occasional seller and states:

- (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.
- (b) As used in this section, the term "occasional sale" means:
 - (1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a "retailer" under section 63-3610(c), Idaho Code. The definition of "occasional sales" provided in this subsection does not apply to use tax in regard to tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property.

Those who qualify as occasional sellers are limited to those who squarely fit within the definition

provided by the statute. For example, a person who sells their own personal car during a year and is not an auto dealer could qualify as an occasional seller. In comparison, those whose normal course of business is providing a product for sale would not qualify as an occasional seller. Idaho Code section 63-3622K(1) specifies the occasional sale exemption doesn't apply to retailers. Petitioners qualify as retailers because they are businesses that hold themselves out as selling tangible personal property to their customers. Each entity made retail sales of [REDACTED] equipment and installed that tangible personal property in Idaho, meeting the definition of 'retailer' in Idaho Code section 63-3610.

Idaho Code section 63-3622K(1) is further clarified in Sales & Use Tax Administrative Rule 099.01.a., titled "Occasional Sales" which states:

- a. If the sale does not qualify as an occasional sale, the seller is a retailer and will collect and remit sales tax in the same manner as any other seller. See Section 63-3610, Idaho Code.

Therefore, based on the Sales & Use Tax Administrative Rule 099, Petitioners should have obtained an Idaho Seller's permit and collected and remitted sales tax according to Idaho Law for the sales they made into Idaho.

E. This matter is not barred by the statute of limitations set forth by Idaho Code Section 63-3633.

Petitioners assert in their protest that the Tax Commission inappropriately extended the Audit Period, and these items are out of statute. Petitioner references Idaho Code section 63-3633(c) and stresses that a taxpayer must fail to file a return, stating that neither Petitioner was required to file returns during the Audit Period.

Idaho Code section 63-3633 states the following:

- (a) The amount of taxes imposed by this chapter shall be assessed within three

(3) years after the due date of the return or the date the return was filed, whichever is the later, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; provided, however, if an assessment has been made within the prescribed time, such tax may be collected by levy or by a proceeding in court within a period of six (6) years after assessment of the tax and, provided further, that this shall not be in derogation of any of the remedies elsewhere herein provided. The running of the period of limitations provided by this section shall be suspended for the period during which the state tax commission is prohibited from making the assessment or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(b) In the case of a false or fraudulent return with the intent to evade tax, or a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In the case of taxes owed by a person who has failed to file a return as provided in section 63-3623, Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed.

(d) The periods of limitation upon assessment and collection provided in this section shall not apply:

(1) In cases where the facts disclose a false or fraudulent act with the intent to evade tax, or

(2) To taxes collected by a retailer, seller or any other person who has failed to pay over such taxes to the state tax commission.

Per the records reviewed, Petitioners, as retailers engaged in business in this state, were required to hold Idaho Seller's permits and file sales and use tax returns for the Audit Period. Petitioners failed to file any Idaho sales tax returns. Additionally, Petitioners' invoices reflect that sales tax was collected from their Idaho customers but not paid over to the Tax Commission. Thus, on this basis the period of limitations is open and this case is allowed to proceed under Idaho Code section 63-3633.

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 Tax 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 and therefore, has not met its burden.

The Bureau added interest to the deficiency. The Tax Commission reviewed the addition and found the interest to be appropriate per Idaho Code section 63-3045. Interest has been updated accordingly and is calculated through December 31, 2023, and will continue to accrue per Idaho Code section 63-3045.

THEREFORE, the Notice of Deficiency Determination dated October 31, 2023, is hereby AFFIRMED and MADE FINAL.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$114,085	\$5,704	\$28,899	\$148,688

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2025,
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.
