

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-078-300-160
	)	1-490-928-640
	)	0-746-963-968
Petitioner.	)	DECISION

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On November 17, 2022, the staff of the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued three Notices of Deficiency Determination (Notices) to \_\_\_\_\_ proposing the following: sales and use tax, penalty and interest in the total amount of \$117,216 for the period of July 1, 2018 through May 31, 2021(Audit Period); travel and convention tax<sup>1</sup>, penalty, and interest in the total amount of \$16,025 for the Audit Period; and Greater Boise Auditorium tax<sup>2</sup>, penalty, and interest in the total amount of \$38,434 for the Audit Period.

On January 19, 2023, Petitioner filed a timely appeal and petition for redetermination of the Notices. An informal hearing was held on July 17, 2023. The Commission, having reviewed the matters including supplemental information and information gained at the informal hearing, hereby issues its decision, modifying the Notices.

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<sup>1</sup> Travel and Convention tax is imposed and collected for the following purpose and under the authority of Idaho Code section 67-4718(1) “From and after January 1, 1985, there is hereby levied and imposed an assessment at the rate of two percent (2%) of the amount of a sale as defined in section 67-4711, Idaho Code. The receipts from the assessment levied by this section shall be paid to the state tax commission in like manner, and under the definitions, rules and regulations of said commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code.”

<sup>2</sup> The Greater Boise Auditorium District tax is imposed and collected for the following purpose and under the authority of Idaho Code section 67-4917B “The board shall have power and authority to levy a sales tax of not to exceed five percent (5%) of the receipts derived by hotels and motels within the district from the furnishing of hotel and motel rooms.”

## BACKGROUND

Petitioner is a monthly filer for sales and use tax, travel and convention tax, and Greater Boise Auditorium tax. Petitioner owns and operates \_\_\_\_\_ properties with their corporate headquarters in Tulsa, Oklahoma. The Bureau scheduled Petitioner for audit and sent an audit notification letter. The Bureau reviewed Petitioner's sales and purchase transactions for the Audit Period.

The Bureau reviewed nontaxed sales transactions identifying two issues. The first issue is the nontaxed sales without supporting documentation to show a sales exemption. The second issue is room stays which were resold to a marketplace facilitator. The Bureau requested information to support these nontaxed sale transactions, but Petitioner was unable to provide the information.

The Bureau also reviewed *Loyalty and Reward* transactions, which are room stays paid for with points earned based on participation in the *Loyalty and Rewards* Program. The Bureau identified the amount specifically for *Loyalty Point* stays versus the amount actually collected and remitted. According to the Bureau, Petitioner incorrectly remitted applicable taxes on the reimbursed rate rather than the room value rate.

Lastly, the Bureau reviewed Petitioner's purchases for use tax remittance. The Bureau identified the amount Petitioner under remitted.

The Bureau issued their Notices based on the above findings. Petitioner submitted their protest to the Bureau on January 19, 2023, arguing three issues. The first issue Petitioner discusses is the identification of valid exempt sales. Petitioner included additional exemption certificates for the Bureau's review. The Bureau reviewed the provided exemption certificates and modified the Notices. The second issue is the taxation of unverified sales made on a marketplace facilitator. The third issue is the taxation on the *Loyalty and Rewards* transactions. Unable to resolve the remaining

two issues, the Bureau transferred the case to the Appeals Unit (Appeals) for administrative review.

Appeals sent Petitioner a letter informing them of the options available for redetermination. Petitioner scheduled an informal hearing and sent a letter received from *Expedia*. The letter states that all sales made on their marketplace would be their responsibility to collect all the applicable taxes. The letter mentions House Bill No. 259 (HB 259), passed in the 2019 Legislative session. Appeals reviewed the additional information and HB 259 and has further modified the Notices to reflect the sales made through a marketplace facilitator.

The Petitioner's disagreement about whether sales tax was due on the amount reimbursed for a *Loyalty and Rewards* point stays over the amount taxable was discussed. The remaining issue, the *Loyalty and Rewards* transactions, remains unresolved.

## LAW AND ANALYSIS

On the Commission's website, it discusses the treatment of *Loyalty and Rewards* programs and the parameters of when they are taxable. The following is taken from the website:

### *Loyalty and rewards programs*

You might need to charge customers tax on the value of a free room if you have a loyalty or rewards program that gives them free nights. The "value" is the amount the customer would have paid for the room.

**Charge** room taxes<sup>3</sup> on the value of the free room if **both** of these are true:

- A third party administers your rewards program.
- Customers can pay for nights with points earned through credit card purchases, by buying points directly from the third party, or by other means.

**Don't charge** room taxes on the free night if **both** of these are true:

- You administer your own rewards program.

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<sup>3</sup> "Room taxes" include sales tax, travel and convention tax, and any auditorium district tax that applies to your area.

- You can clearly document that the customer received a free night of lodging as a reward for staying "x" number of nights.

Also, **don't charge** room taxes if the free night applies to a stay that qualifies for an exemption (e.g., it's part of a continuous stay longer than 30 days). However, you must document the stay as an exemption.

In Petitioner's case, they are administering a rewards program on behalf of \_\_\_\_\_ The Bureau reviewed the parameters in the rewards program and identify IDAPA 35.01.02.051.01 which states "Tax must be charged before deducting the following:" which goes further into breaking down the types of discounts, specifically in this case, IDAPA 35.01.02.051.01c states:

Manufacturer's discount. A manufacturer's discount is a price reduction offered by a manufacturer to a consumer for purchasing their product from a retailer who is then reimbursed that amount by that manufacturer. Sales tax is computed on the full amount of the purchase price before subtracting the coupon amount. This includes coupons issued by a manufacturer allowing the buyer to buy one item and get a second item free if the retailer will be reimbursed by the manufacturer.

Petitioner's discount taken in this context implies \_\_\_\_\_ as the "Manufacturer" and Petitioner is the administrator for the rewards program. In that case, Petitioner would act as a retailer, referencing IDAPA 35.01.02.051.01c and would be responsible for the "full amount of the purchase price before subtracting the coupon amount."

Petitioner protested the amount the Bureau calculated as the *value* of each room held taxable. Their argument is Petitioner could not calculate an average price on the room for the same day if the transaction occurred at the same time. Because Petitioner cannot calculate the average room rate, they cannot apply it towards the guest at the time they are making a reservation.

However, the amount subject to tax would not be the average room rate, it would be the amount subject to tax if Petitioner came in and rented the room without any points, as that would be the identified sales price. Idaho Code section 63-3613 defines "Sales price" ...means the total amount for which tangible personal property, including services agreed to be rendered as a part of

the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise” and in addition goes further to discuss what would not be included in the sales price in Idaho Code section 63-3613(b)(1):

Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.

When reviewing the *Loyalty and Rewards* program in conjunction with the applicable code and rules that apply towards it, the Commission agrees with the Bureau’s calculation for the value of the room used to calculate the amount taxable for *Loyalty Stays*.

### **CONCLUSION**

Petitioner’s audit resulted in issues involving nontaxed sales transactions, Loyalty and Rewards room stays, and underreporting use tax. Petitioner was able to supply documentation resolving some of the issues. The Commission reviewed the modifications to the Notices and has found them to be appropriate for a hotel not collecting and remitting sales tax on specific sales and under remitting use tax. The interest is calculated till December 20, 2023, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

Based on the information available, the Commission finds the modified Notices prepared to be a reasonably accurate representation of Petitioner’s liability for the Audit Period.

THEREFORE, the modified Notices are hereby APPROVED in accordance with the provisions of this decision and are AFFIRMED and MADE FINAL.

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

<u>TAX TYPE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Sales & Use Tax 0-078-300-160	\$94,968	\$4,749	\$15,552	\$115,269
Travel & Convention 1-490-928-640	\$10,636	\$532	\$1,332	\$12,500
Greater Boise Auditorium 0-746-963-968	\$25,726	\$3,163	\$1,286	\$30,175
			TOTAL DUE	\$157,944

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2023,  
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.

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