



concerning missing documentation before it was forwarded to the Tax Commission's Appeals Unit (Appeals). Appeals sent Petitioner a letter outlining the options for redetermining a protested Notice. Petitioner responded, requesting an informal hearing on April 6, 2022. At the informal hearing, Representative stated he did not feel properly informed of the audit process and had communication issues with the Bureau. Representative was educated on the review process for sales and use tax audits and provided current copies of all audit schedules. April 22, 2022 was set as the due date to provide supporting documentation. The supporting documentation was not provided by the due date.

Representative sent a second protest letter on October 7, 2022, now arguing Petitioner fits the definition of nursery in Idaho Code Section 22-2302 and was not subject to Idaho sales or use tax. The letter further claims that nurseries fit the definition of an "Agricultural Company" and the state of Idaho precluded agricultural companies from reporting sales and use tax on inventory.

### **Relevant Tax Code and Analysis**

Idaho Code section 63-3622(a) (Exemptions – Exemption Certificates and Resale Certificates) states that all sales in Idaho are subject to the taxes imposed by Chapter 36 unless an exemption or resales certificate has been received from the purchaser. Petitioner was unable to provide exemption certificates for all non-taxed sales during the review period.

Idaho Code section 63-3621(2) explains that every person using tangible personal property in this state is liable for the tax imposed by this chapter. The tax is due unless the purchaser can provide a valid receipt showing Idaho sales tax paid. Petitioner did not supply detailed invoices showing Idaho sales tax paid for all purchases during the review period.

The updated protest received October 7, 2022, claimed an agricultural exemption for nurseries. Representative references Idaho Code Section 22-2303 as evidence of the exemption

claimed. Title 22 of Idaho law covers the creation and duties of the Idaho Department of Agriculture. Title 22 does not determine the taxability of nurseries for sales and use tax purposes. It's only use to Title 63 (Revenue and Taxation) is to provide definitions of the types of agricultural businesses and the licensing requirements.

Representative asserts Idaho Code section 63-3622(g) exempts Petitioner from reporting sales or use tax on installations of inventory for real property improvements. They claim seedlings cannot be multiplied (split and grown) and then considered to be tangible personal property. Idaho Code Section 63-3622(g) states:

(g) It shall be presumed that sales made to a person who has completed an exemption certificate or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

The code section applies to retailers who receive an exemption certificate from the purchaser. The retailer is relieved of the duty to collect Idaho sales and use tax from the purchaser by the exemption certificate. Idaho Code section 63-3622(g) does not relieve the purchaser of their responsibility to pay taxes on tangible personal property they use.

Petitioner is considered the consumer (end user) of any materials used in the performance of a real property contract per Idaho law. IDAPA 35.01.02.012 explains that contractors are the end user of all tangible personal property used to alter, repair, and restore real property.

#### 012. CONTRACTORS IMPROVING REAL PROPERTY (RULE 012).

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. A contractor is any person acting as a general contractor, subcontractor, contractee, subcontractee, or speculative builder who uses material and equipment to perform any written or verbal contract to improve, alter, or repair real property.

b. 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.

Petitioner did pay sales tax correctly on some materials used for real property improvement contracts, such as sprinkler piping and systems.

Idaho Code section 63-3613(b)(4) specifically excludes any amount charged for services or labor for installation or application. All schedules were reviewed for the improper taxation of installation or service labor. Schedule S-2 shows all sales of installation charges were extracted from the transactions held taxable. Petitioner did not provide evidence for installation charges held taxable in the audit schedules during the review period.

### **Conclusion**

Petitioner was unable to substantiate a legal basis to adjust the Notice issued by the Bureau. Due to this and the reasons stated above, the Commission upholds the Bureau's findings.

The Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales tax liability for the period February 1, 2016, through January 31, 2019.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed the addition, found it to be correct per Idaho Code section 63-3045. Interest 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 January 7, 2021, 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>
\$29,465	\$5,927	\$35,392

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

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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