

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-433-931-264
)	
Petitioner.)	DECISION
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On December 2, 2022 the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to (Petitioner), for the period of December 1, 2021 through December 31, 2021, proposing use tax, penalty, and interest in the total amount of \$546.

Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on April 3, 2023.

The Commission, having reviewed the audit file and considered the information provided at the hearing, hereby upholds the audit findings for the reasons detailed below.

Background

Petitioner is a small fishing resort in Idaho, near Yellowstone National Park. Petitioner provides boat, paddle board, and kayak rentals to its customers. The Bureau received information about Petitioner’s purchase of a 6 x 12-foot trailer. At the time of purchase, Petitioner supplied a *Sales Tax Resale or Exemption Certificate (ST-101)* to the vendor, identifying their primary nature of business as a “Resort” and the products sold, leased, or rented as “Resort.”

The Bureau contacted Petitioner and explained the exemption certificate submitted to the vendor at the time of purchase was invalid. The Bureau explained further that although the primary nature of Petitioner’s business was to provide recreational products for rent, the trailer in question

was not a product available for rent. Since the trailer itself wasn't for rent, it was not eligible as sales tax exempt.

After the Bureau issued the Notice, Petitioner submitted their protest, stating the use of the trailer is more of a service for customers when they rent longer kayaks, boats, or canoes and therefore is not taxable. The Bureau transferred the case to the Commission's Appeals Unit (Appeals).

Relevant Tax Code and Analysis

In Idaho, the sale, purchase, and use of tangible personal property are subject to tax unless an exemption applies. If sales tax is not paid to the vendor, the buyer owes a use tax to the state. Remittance of use tax extinguishes the sales tax obligation. Petitioner is a resort in the business of renting out recreational equipment, they are considered to be a retailer and any item not purchased for resale is subject to tax.

A. Did the trailer qualify for resale?

During the Informal Hearing, Petitioner explained the intention behind purchasing the trailer, which was an accompaniment for customers to use in order to transport their recreational equipment rental. In order to determine if the trailer qualifies for resale, the definition of "Sale" in Idaho Code Section 63-3612(1) is:

...any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

In addition, "The lease or rental of tangible personal property," is identified as a sale in Idaho Code Section 63-3612(2)(h).

Petitioner provides recreational equipment for rent. These rentals do not come with operators, as discussed in IDAPA 35.01.024.02:

A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer with a requirement to collect and remit Idaho sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who primarily rents bare equipment may buy the equipment without paying tax to the vendor by giving the vendor a resale certificate. See Rule 128 of these rules. If the equipment owner uses the equipment for his own benefit or in his own business operations, the equipment owner pays use tax based on a fair market rental value for the period during which he used his own equipment.

According to Petitioner, the use of the trailer is for customers who need assistance to transport their rented recreational equipment, it is not an item available for resale or rent.

B. What is Use?

Idaho Code section 63-3615(b) discusses “use” as the following:

The term “use” includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section [63-3622D](#), Idaho Code, except that the term “use” does not include the sale of that property in the regular course of business.

The use of the trailer was described as a service available for customers in need. The Bureau conducted a review of Petitioner’s sales journals and found no transactions showing the trailer was charged as a rental. In addition, the trailer was not listed as an item available for rent either. This indicates the purchase of the trailer was not for resale and in fact indicates the “use” of the trailer.

Idaho Code Section 63-3621(1) discusses the imposition of Use Tax:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence

of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

Therefore, the purchase price for the trailer is subject to tax.

C. The responsibility of the buyer.

Petitioner did not pay sales tax to the vendor at the time of purchase. As discussed in Idaho

Code section 63-3622(d):

A seller may accept an exemption certificate or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption certificate or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. The purchaser providing an exemption certificate or resale certificate to a seller shall bear all responsibility and liability for any subsequent audit of the transaction and the seller shall be held harmless. A seller need not accept an exemption certificate or resale certificate that is not readable, legible or copyable.

In regard to the details to the sale, Petitioner submitted to the vendor at the time of purchase a resale exemption certificate for the purchase of the trailer claiming to be for resale. The trailer was identified as not resale and is considered to be taxable.

Conclusion

Based on the information available, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's tax, penalty, and interest for the purchase of a trailer.

THEREFORE, the Notice of Deficiency Determination 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>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$504	\$25	\$37	\$566

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.
