

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-570-459-136
	)	
Petitioner.	)	DECISION
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On October 7, 2021, the staff of the Sales/Fuels Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) modified the May 2019 sales and use tax return (Notice) of (Petitioner) to adjust the tax, penalty, and interest shown on Petitioner’s amended sales and use tax returns for the period April 1, 2018 – July 31, 2019. The Notice created a refund of \$6,049.71 in tax, penalty, and interest which was issued to Petitioner. Petitioner was denied adjustments in the amount of \$21,205.84 for the period April 1, 2018 – July 31, 2019. Petitioner disagreed with the Bureau’s findings and filed an appeal of petition for redetermination of the Notice.

The Commission, after reviewing the case file, and information received during the informal hearing, hereby upholds the Bureau’s refund denial for the reasons detailed below.

**Background and Audit Findings**

Petitioner is an electrical contractor based in MN. Petitioner registered with the Idaho Secretary of State in January 2009 but did not apply for a sales and use tax permit until February 2018. Starting in 2018, Petitioner was contracted to provide and install electric equipment at a federal building ( located in ID. In April of 2021, Petitioner filed for a sales and use tax refund by amending their previously late filed sales and use tax returns for the period April 2018 – July 2019.

Idaho use tax was paid on the total price of the electrical equipment purchased by Petitioner. The total price for the equipment included services agreed to be rendered as part of the sale. When Petitioner amended their returns, they claimed they should not have remitted use tax on the various labors listed on the invoices. On April 13, 2021, the amended Idaho sales and use Tax returns for the period in question created a credit/refund of \$26,768.55 in use tax, penalty, and interest.

The Bureau opened a refund review for the returns amended by Petitioner. The Bureau denied and reversed all adjustments related to “Factory Witness Testing”, “Start up and field testing”, “Startup costs and field testing”, “ITS services” and “Commissioning support”. Collectively, this work is referred to as “Testing Work” in the purchase orders. The Testing Work was determined to be taxable as services agreed to be rendered as part of the sale in accordance with IDAPA 35.01.02.043.02. As such, the Bureau concluded that the amounts paid for the Testing Work was properly included in the sale price of the electrical equipment and that Petitioner was not entitled to an adjustment related to the Testing Work.

On December 8, 2021, Petitioner protested the results of the refund review by the Bureau. Petitioner’s appeal specifically addressed the portion of the refund claim that the Bureau denied. Petitioner admitted they were contracted to provide and install electrical equipment for

but disputed the Testing Work as taxable. Petitioner argued that the vendors of the equipment had representatives on site, and they were the ones that provided the Testing Work related to the electrical equipment. They further argued that the Testing Work offered by the original vendors was part of the installation of the equipment.

Petitioner’s protest was forwarded to the Commission’s Appeals unit for administrative review. A Notice of Redetermination letter was sent to Petitioner by the Appeal Specialist assigned

the case and an informal hearing was scheduled and held on August 25, 2022. After discussing the electrical equipment purchases and “ with Petitioner, it was agreed they would provide the installation contracts from the vendors as proof the Testing Work was not a service agreed to be rendered as part of the sale. Petitioner did not supply the contracts requested during the hearing. They only provided the purchase orders already received by the Bureau during the original review.

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

Petitioner contends that the Testing Work offered by the original vendors is non-taxable services. Petitioner has cited in their protest Idaho Code section 63-3613(b)(4) and Idaho Sales Tax Administrative Rules 011 and 012 to support its position that it was not responsible for remitting sales or use taxes related to the Testing Work. They have also cited three Idaho Tax Commission Decisions, Docket Nos. 25979, 25326, and 25848 to support their stance that the services in question do not qualify as “services agreed to be rendered as part of the sale”. Petitioner is claiming that the Testing Work is tantamount to installation charges and should be excluded from the sales price for taxation purposes.

The equipment was purchased from vendors and None of these vendors are registered with the state of Idaho to collect Idaho sales tax. The specialized nature of the equipment and requirements of federal guidelines for the project, forced the vendors to test the equipment to make sure it worked to the specifications of the Federal Government. Testing Work initially occurred at the manufacturing plant and again after delivery to the job site to ensure there were no issues or defects of the equipment.

Petitioner included the Testing Work, as performed by the vendors, in their purchase orders submitted to the vendors. The purchase orders used to order the equipment in question contained a set of purchase order terms and conditions as part of the orders from the vendors. The title of the document is, "PURCHASE ORDER TERMS AND CONDITIONS FOR MATERIALS OR EQUIPMENT ONLY". The first paragraph of the terms and conditions explains that a "Master Vendor Service Agreement" will be included with the purchase order in instances where the vendor provides on-site labor. None of the purchase orders provided contained a Master Vendor Service Agreement that included the installation of the equipment at the jobsite.

The largest of the purchase orders was from \_\_\_\_\_ and contained a Statement of Work (SOW) for the project. Section 3b of the SOW explains the work provided for the project. Page 6 of the SOW contained the following note:

*Note: Normal site start-up services are performed between Monday and Friday, 8am-5pm. After hours startup is available as a cost adder. Startup does not include any rigging or installation as typically performed by a qualified electrical contractor. Additional, costs (time and material) may be applicable if delays occur by customer or site beyond \_\_\_\_\_ control for the above quoted time. Load bank and test equipment shall be provided by others.*

The labor included in the purchase of the equipment is solely for the functionality of the equipment before and after installation by Petitioner.

Based on the above information and considering Idaho code and rules, the Testing Work is not installation labor and was properly included in the sales price. Sales Tax Administrative Rule 011 describes when services are includable in the sales price. In relevant part, this section states:

**01. Retail Sales of Tangible Personal Property Together with Services.** The sales tax applies to retail sales of tangible personal property. It does not apply to the sale of services except as stated in statute or rule. However, when a sale of tangible personal property includes incidental services, the tax applies to the total amount charged, including fees for any incidental services except separately stated transportation and installation fees. The fact that the charge for the tangible personal



Administrative Rule 011(01). The Testing Work is a necessary, but incidental part of purchasing this equipment.

Petitioner refers to the disputed charges as installation charges and therefore not taxable per Sales Tax Administrative Rule 011(01) and Idaho Code Section 63-3613(b)(4). The facts provided to the Commission by Petitioner do not support its claim that the Testing Work is installation services. The purchase orders Petitioner provided show that the Testing Work performed by the vendors is not installation labor but preparation services to ensure the specialized equipment functions as required. Additionally, Petitioner was the one who incorporated the equipment into the realty at the job site, not the vendors. As such, the Testing Work is not installation services.

Petitioner appropriately reported the Testing Work as part of the sale price of the electrical equipment on its original returns. Petitioner took possession of the equipment at the time of delivery to the job site. Pursuant with Sales Tax Administrative Rule 12, Petitioner is a contractor improving real property and is responsible for remitting use tax on the equipment. Specifically, Sections 08 and 09 of that rule requires Petitioner to report use tax. Section 8 addresses custom-made goods and states:

08. Custom-Made Goods. Sales tax applies to the entire price charged for custom-made goods sold by the maker. If a contractor orders fabricated steel from a steel company, he pays sales tax on the entire price of the fabricated item, including the cost of the labor involved. On the other hand, if the contractor buys the steel and fabricates it himself for the job, he pays a tax only on the materials he buys. (3-31-22)

In turn, Section 9 pertains to value and states:

09. Value. The contractor owes use tax on the value of the job materials at the time he exercises right or power over them. Value, as used in Section 63-3621, Idaho Code, means: (3-31-22)

In short, these sections require the contractor to pay a use tax on the value of materials incorporated into real property and the value of these materials include cost of labor related to the materials. Petitioner exercised right, power, and control of the tangible personal property at the time of delivery to the job site. Petitioner was the installer of the tangible personal property purchased from the vendors and as such, is required to pay a use tax on the total amount charged less shipping or installation.

### **Conclusion**

The Testing Work was incidental to the sale of the electrical equipment, was not related to the transportation of the equipment, and was not part of the installation services. The Bureau properly determined that Petitioner was not entitled to a refund related to the Testing Work.

The Bureau added interest to the use tax refunded. The Commission reviewed the addition and found it to be appropriate per Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Refund Denial dated October 7, 2021, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

Petitioner's refund was reduced by the Notice, therefore, no Demand for payment is made or necessary.

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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