BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)) DOCKET NO. 0-6.	52 828 848
) DOCKET NO. 0-0	32-070-040
Petitioner.) DECISION)	

Determination (notice) dated December 1, 2022, issued by the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) for the period of August 1, 2017, through December 31, 2020. The Idaho State Tax Commission (Tax Commission), having reviewed the matter hereby issues its final decision to uphold the Notice.

BACKGROUND

Petitioner is based in Arizona and provides interior design services for franchised hotels.

During a comprehensive review of Petitioner's Idaho customer, the Bureau obtained sales invoices showing Petitioner had charged its customer Idaho sales tax. The Bureau researched Tax Commission records for any sales and use tax returns filed by Petitioner related to those sales in Idaho. The Bureau did not find any returns and additional research confirmed Petitioner did not hold an Idaho seller's permit.

The Bureau contacted Petitioner and enquired about the invoices it issued charging Idaho sales tax. Petitioner explained they are not responsible for Idaho sales tax because they are purchasing agents, not retailers. As purchasing agents, they were transferring their costs for the items sold. To substantiate their argument, Petitioner provided a copy of their purchase invoice which showed the vendor charging them sales tax.

The Bureau reviewed all available information and determined that Petitioner acted as a retailer and was required to remit the collected sales tax. Therefore, the Bureau calculated the amount of sales tax Petitioner charged and collected on each invoice and issued a Notice based on this amount.

Petitioner's representative, (Representative) protested the Notice, arguing two issues: (1) Petitioner is not a retailer, so the responsibility to remit tax is not on them. (2) the Bureau's calculation of interest should not start accruing until the date of delivery. The Bureau reviewed Petitioner's protest and made no adjustments to the Notice based on their assertions. The Bureau then forwarded the case to the Tax Commission's Appeals Unit (Appeals) for administrative review. Appeals sent Petitioner a letter discussing the options available for redetermining a Notice. Petitioner responded but neglected to schedule an informal hearing and did not provide any additional information to substantiate their claims. Over time, Petitioner ceased to communicate with Appeals. Therefore, the Tax Commission renders its decision based on the information available.

LAW AND ANALYSIS

Retailers in Idaho are sellers of tangible personal property. Idaho Code section 63-3610 defines a retailer as:

- (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.
 - (d) When the state tax commission determines that it is necessary for the

efficient administration of this act to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the state tax commission may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this act.

(e) Persons conducting both contracting and retailing activities. Such persons must keep separate accounts for the retail portion of their business and pay tax in the usual fashion on this portion.

In the present matter, Petitioner's actions match the statutory definition of a "retailer,", they bought and sold tangible property as evidenced by the invoices they provided. Petitioner provided no information to show they are purchasing agents.

Petitioner's argument related to the calculation of interest, while novel, is not supported by Idaho Code section 63-3624(h) which states:

When the tax commission determines that a retail sale is not exempt and the purchaser has failed to voluntarily pay sales or use tax in regard to the property or services purchased, the tax commission may collect the sales tax which was due at the time of the sale or the use tax due at the time of storage, use or other consumption of the taxable goods or services by issuing to the purchaser a notice of deficiency determination, asserting tax together with interest, at the rate provided in section 63-3045, Idaho Code, and may assert penalties found elsewhere in this chapter.

CONCLUSION

In Idaho it is well established that a Tax Commission Notice "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 2.d 846, 850 (1984)). Petitioner has not met their burden. Therefore, the Tax Commission finds the Notice is correct. Interest is calculated at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice 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>	PENALTY	<u>INTEREST</u>	<u>TOTAL</u>		
\$85,637	\$4,282	\$19,092	\$109,011		
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	2025.			

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this a copy of the within and foregoing DEC mail, postage prepaid, in an envelope ad	ISION was served by sending	2025, ng the same by United States
	Receipt No.	