

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-805-451-776
)	
Petitioner.)	DECISION
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On February 5, 2021, the staff of the Sales/Fuels Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to (Petitioner) proposing sales and use tax, penalty, and interest for the audit period April 1, 2014, through March 31, 2017, in the total amount of \$168,593. The initial Notice was reduced to \$64,111 in use tax, penalty, and interest after additional information was received from Petitioner.

The Commission, after reviewing the audit and hearing Petitioners stance, hereby upholds the Bureau’s adjusted Notice of \$64,111, for the reasons detailed below.

Background and Audit Findings

Petitioner is a brewery of located in Id. In Petitioner started construction of a new facility that would house a - brewing system, - fermenters, a canning line, and tap room. The new facility opened in

Petitioner was first contacted by the Bureau in January 2017 to start the audit process. The Bureau conducted a review of sales through reconciliations of total sales and sales tax collected. Purchases were also reviewed in detail for the audit period. Many of the issues associated with the original Notice were due to a lack of documentation or supporting information. These issues included variances in total sales, journal entries for reimbursements to employees, and equipment denied the production exemption.

On April 8, 2021, Petitioner's representative (Representative), _____ of

filed a timely appeal and petition for redetermination of the Notice. The appeal from Petitioner's Representative addressed the following issues:

1. Total sales. The examination results show that tax is due on all sales found in the general ledger without regard to whether they were in-state or out of state sales. Taxing the entirety of the sales produces by _____ even sales that were to out of state distributors does not make sense. The entire general ledger was given to the auditor, including to whom the sales were delivered, but the difference in sales reported to Idaho and the sales in the general ledger is showing as taxable on the auditor's final documentation. We believe this to be incorrect as Idaho should not be taxing out of state sales. (sic)
2. Fixed assets: The examination results show that tax is due on nearly \$100,000 of fixed asset equipment we believe to be 100% connected with the brewing/production process and exempt from tax.
3. The information for items subject to use tax include reimbursements to employees, an automobile trade in which is clearly described, and other clearly nontaxable items that were note removed. (sic)

Issues one and three were resolved by the Bureau after receiving necessary documentation. Issue two of the appeal pertained to fixed asset purchases on schedule U-1 held taxable by the Bureau.

The Bureau kept the audit after the Notice was protested to settle all matters of a factual nature before sending the case to Appeals for matters of law. The original Notice was significantly reduced after receiving necessary documentation for the review. The remaining issues after the post audit adjustments concerned the denial of the production exemption for certain fixed assets and the lack of supporting documentation to show tax paid.

The case was transferred to the Appeals unit to address the remaining protested items. Petitioner and their Representative were sent a hearing rights letter and an informal hearing was held on June 1, 2022. During the informal hearing, the Representative agreed to provide additional information to substantiate the production exemption. This information has not been provided.

Relevant Tax Code and Analysis

In Idaho, the storage, use, or other consumption of tangible personal property is subject to an excise tax of six percent (6%). The person who stores, uses, or otherwise consumes the tangible personal property is liable for the tax unless they provide evidence of tax paid to this state or an exemption is claimed (Idaho Code section 63-3621).

The protested items held taxable in the audit either did not have supporting documentation showing tax paid or did not qualify for an exemption from sales and use tax. The lack of supporting documentation cannot be argued. Petitioner is responsible for maintaining the documentation necessary to prove tax paid. These records are to be kept for a minimum of four (4) years and made available as the Commission requires (Idaho Code section 63-3624).

The non-production fixed assets in question consisted of four items, a fan coil, a portable foam washer, a keg washer, and a can and glass crusher. During the informal hearing, the Representative explained why they believed these items to be part of the production process of brewing beer. The Representative was asked to provide supporting documentation or evidence that showed how the assets in question were used during the production process. This evidence was not received.

The production exemption allows an exemption for the purchase of equipment and materials primarily and directly used or consumed in the manufacturing of tangible personal property for resale (Idaho Code section 63-3622D(a)(2)). The exemption extends to equipment and supplies required to meet a safety standard of a state or federal agency in the production process (Idaho Code section 63-3622D(a)(5)). Two of the items in question are cleaning tools. One is used to clean kegs so they may be re-used and the other is used to clean the fermentation vats. The keg cleaner does use carbon dioxide in the cleaning process. The carbon dioxide does not

become a part of the product but instead is used for pressure to force all residual liquids out of the cleaned kegs. Neither piece of equipment are required by federal or state law.

The production exemption also explains that machinery, equipment, supplies used in a way that is incidental to the manufacturing process do not qualify for the production exemption (Idaho Code section 63-3622D(f)). This would include janitorial or maintenance equipment and supplies. The can and bottle crusher fits in this category. The crusher is used for the destruction of inventory that is past its expiration date or returned product that cannot be resold.

The final item in question is the fan coil that is part of the cooling system used in the building for the storage of finished product. The cooling system is part of the realty and does not qualify per Idaho Code section 63-3622D(g)(5).

(5) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

The Bureau adjusted the original Notice to account for additional information received from the Representative. The Commission has not been provided with information that would substantiate any additional changes to the adjusted Notice.

Conclusion

The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Petitioner was able to provide some additional information to the Bureau that supported a reduction of the original Notice. As a result, the Commission will uphold the adjusted Notice.

Absent information to the contrary, the Commission finds the adjusted Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales and use tax liability for the period April 1, 2014 through March 31, 2017.

The Bureau added penalty and interest to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code sections 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through April 25, 2023 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the adjusted Notice of Deficiency Determination dated February 5, 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, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$50,925	\$2,545	\$14,355	\$67,825

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.
