

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-881-214-464
)	
Petitioner.)	DECISION
)	

(Petitioner) protested the Notice of Deficiency dated August 15, 2022, asserting use tax, interest, and penalty in the total amount of \$61,655 for the period of January 1, 2015 through July 31, 2021 (Audit Period). Petitioner protested the Notice, arguing additional documentation was available for review. The Idaho State Tax Commission (Commission), having reviewed the matter, hereby issues its decision, upholding the Notice, as issued by the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau).

Background

Petitioner is a real property improvement contractor focused primarily on The Bureau conducted a routine comprehensive audit to determine Petitioner’s compliance with Idaho sales and use tax laws. Petitioner does not have a seller’s permit, nor do they have a use tax number. A use tax number is necessary for contractors who make purchases without paying sales tax to the vendor at the time of purchase. The Bureau was unable to find evidence of any use tax paid to the Commission, therefore Petitioner would need to pay sales tax for their purchases, unless an exemption applies.

The Bureau requested copies of Petitioner’s general ledger, contract information about real property improvements, purchase invoices, and depreciation schedules. Petitioner did not provide the purchase information the Bureau requested. A Notice was issued to Petitioner for taxes owed during the Audit Period. Petitioner responded to the Notice in their protest, requesting a review on

additional information still available. The Bureau contacted Petitioner on September 20, 2022 to review the information they referenced in their protest. After receiving no contact from Petitioner in two and a half months, the Bureau informed Petitioner they intended to forward the file to the Commission's Appeals Unit (Appeals) for administrative review.

Appeals sent Petitioner letters in February 2023, April 2023, and May 2023, outlining the options for redetermining a Notice but did not receive a response. Therefore, the Commission will decide this matter based on the information presently available.

Law and Analysis

Idaho Code section 63-3609(a) specifically states "All persons engaged in constructing, altering, repairing or improving real estate are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property." A further discussion on the parameters identifying contractors is in IDAPA 035.01.02.012. Contractors Improving Real Property.

In this case, Petitioner is a contractor and is responsible for paying the sales tax at the time of purchase or remitting use tax on their sales and use tax returns. Idaho Code section 63-3619(f) states "The taxes imposed by this chapter shall apply to the sales to contractors purchasing for use in the performance of contracts with the United States." In scenarios where the contractor did not pay sales tax at the time of purchase to the vendor, they owe use tax on the purchase price.

Use tax is imposed on the storage, use, or other consumption in this state of tangible personal property, unless an exemption applies. The use tax is complementary to the sales tax, which is imposed on the retail sale of tangible personal property within Idaho. The use tax liability may be extinguished when sales tax has been paid to Idaho. To document Idaho tax as paid, the purchaser may provide a receipt from the retailer.

In Petitioner’s case, the Bureau made reasonable effort to get in touch with Petitioner to review available purchase information. The information requested was not made available to the Bureau, and the Bureau moved forward and issued the Notice. Specifically, Idaho Code section 63-3621(2) states:

Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

Idaho Code section 63-3624(e) authorizes the Commission to examine books, papers, record, and equipment of any person liable for sales tax or use tax and investigate the character of any person’s business in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

Conclusion

Petitioner is a contractor installing and repairing real property improvements. As a contractor, Petitioner is the final user of the materials used while installing or repairing real property, therefore they are responsible for the tax on the materials purchased. Based on the information available, the Commission finds the Notice prepared by the Bureau to be an accurate representation of Petitioner’s use tax liability for the Audit Period for purchases of materials used for real property improvement jobs. Interest is calculated through March 26, 2024 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

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>AUDIT PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1/1/2015-7/31/2021	\$51,267	\$2,563	\$11,428	\$65,258

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 _____ 2024.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2024,
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.
