

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-074-807-808
)	
Petitioner.)	DECISION
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(Petitioner) protested the Notice of Taxpayer Initiated Refund Determination (Notice) issued September 15, 2022. Petitioner disagreed with the Notice from the Sales, Use and Miscellaneous Tax Audit Bureau’s (Bureau) determination of whether a nonresident making a purchase in Idaho was still held liable for tax. The Tax Commission reviewed the matter and hereby upholds the Notice.

Background

Petitioner submitted to the Bureau a Form TCR – Sales Tax Refund Claim (TCR), requesting a refund of sales tax paid to online vendors for purchases shipped to Idaho. Petitioner provided the eight (8) purchase invoices, from January 27, 2022 through May 31, 2022, showing Idaho sales tax was charged and paid by Petitioner.

After reviewing the TCR and invoices, the Bureau emailed Petitioner explaining that the purchases in question were appropriately taxed. Petitioner responded by forwarding to the Bureau an email correspondence between them and a Tax Representative from the Tax Commission dated January 1, 2022:

“I will be driving back to Alaska and wanted to have several large items (meaning bulky/expensive to ship to Alaska) delivered to a friend that resides in Idaho. When I order these items, given the destination shipping address (not the billing address which will be in Alaska) would be Idaho, I expect I’ll be charged sales tax by the selling company. Is there a process in which I could file for reimbursement of this state sales tax given that Alaska doesn’t have one?”

The Tax Representative responded on January 3, 2022:

“You can file a reimbursement using Form TCR. You will want to cite Idaho Sales and Use Tax Administrative Rule 072.09 which states:

09. Removal from This State. If property is held in this state solely for the purpose of subsequent transport and use outside Idaho or is to be processed, fabricated, attached to, or incorporated into property that is to be transported outside and used or sold outside the state, a use tax will not apply”

The Bureau reviewed the communication and explained to Petitioner that the advice given by the Tax Representative was inaccurate, and the purchase transactions were still taxable.

The Notice denying the refund was sent to Petitioner September 15, 2022. Petitioner sent their protest on September 20, 2022. The Bureau acknowledged Petitioner’s protest and forwarded the case to the Tax Commission’s Appeals unit (Appeals). An informal hearing was scheduled between Petitioner and Appeals for December 1, 2022. During the informal hearing, Petitioner explained that the purchases made were in conjunction with a vehicle they purchased from an Idaho dealer. The vehicle purchased was appropriately exempt from sales tax¹. The items listed on the TCR had been ordered while Petitioner was in their home state, Alaska. The items purchased were then shipped to an acquaintance who is a resident of Idaho. Afterwards, Petitioner drove the vehicle and purchases to Alaska.

During the informal hearing Petitioner reaffirmed the purchases were not for resale and were intended to be installed into the vehicle upon arriving in Alaska. Petitioner explained the reason the purchases were shipped to Idaho was due to the high shipping costs to Alaska.

¹ Petitioner filled out a valid ST-104MV and submitted the information to the dealer upon purchase.

Protested Issue

Petitioner argues they decided on having their purchases shipped to Idaho based on the information they received from the Tax Representative from the Tax Commission. If they were given different advice, the purchased items would never have been shipped to Idaho.

Tax Code and Analysis

Idaho Code section 63-3621 imposes use tax on all tangible property brought into Idaho unless an exemption applies. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property in Idaho. If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state.

The purchase invoices provided showed the items purchased were shipped to Idaho. Petitioner did not submit any exemption forms to the vendors during the time of purchase. Petitioner paid to the vendor the appropriate and correct amount of sales tax owed for each purchase. This amount coincides to IDAPA 35.01.02.072.01. *Imposition of Use Tax*. Which states:

Use tax is imposed upon the privilege of using, storing, or otherwise consuming tangible personal property within Idaho. The tax is imposed on the value of the tangible personal property. A recent sales price is presumptive evidence of the value. In the absence of a recent sales price, the value of the property subject to use tax will be the fair market value at the time of first use in Idaho. Special rules apply to transient equipment which is present in Idaho ninety (90) days or less in any consecutive twelve (12) months. See Section 63-3621A, Idaho Code.

As Petitioner is the receiver of the items, the amount of sales tax paid to the vendor is *Use Tax*. IDAPA 35.01.02.072.02, states:

Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term “use” does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63- 3622D, Idaho Code. See Rules 012, 077, and 079 of these rules.

In this case, Petitioner made purchases online and had them shipped to a location in Idaho, intending the purchases made to be taken out of the state and attached to another tangible item. Petitioner is not in the business for resale, and the purchases in question were for personal use. IDAPA 35.01.02.072.03, defines *Storage* as “Storage is any keeping or retention of tangible personal property in this state, except as inventory for the purpose of sale in the regular course of business or for subsequent use solely outside Idaho.”

Given these facts, Petitioner’s argument appears consistent with the defense of equitable estoppel. Equitable estoppel arises when:

“a party makes a false representation or concealment of a material fact with actual or constructive knowledge of the truth; it is made with the intent that it be relied upon; the party asserting estoppel does not know or could not discover the truth; and the party asserting estoppel relies on it to the party's prejudice.”

Hecla Min. Co. v. Star-Morning Min. Co., 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992); *Allen v. Reynolds*, 145 Idaho 807, 186 P.3d 663, (2008).

However, the Idaho Supreme Court has ruled:

“In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel.” (Citations omitted.)

“The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax.” (Citations omitted.)

State of Idaho v. Adams, 90 Idaho 195, 409 P.2d 415 (1965).

While Petitioner had originally received guidance from a Tax Representative from the Tax Commission, regarding certain transactions to be exempt from tax, Idaho Code section 63-3627(a) states:

“Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of

such taxpayer as an officer, member or employee of such taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.”

Therefore, the Tax Commission finds Petitioner had a duty to pay sales tax at the time of purchase for items shipped into Idaho, per IDAPA 35.01.02.072.02, and Idaho Code section 63-3627(a).

Conclusion

Petitioner’s online purchases were delivered to Idaho. The proper sales tax was paid at the time of purchase and no exemptions from sales or use tax apply in this case. Petitioner argued, based on guidance they received from a Tax Representative from the Tax Commission, the purchases were exempt from tax. The courts have ruled mistakes or misinformation of government officers do not prevent it from collecting tax. In addition, Petitioner is required to remit taxes imposed by law and is personally liable for taxes it did not pay to the vendor at the time of purchase. Therefore, the Tax Commission finds the Bureau’s denial of refund to be appropriate.

Absent information to the contrary, the Tax Commission finds the Notice prepared by the Bureau denying Petitioner’s request for refund for the period of January 1, 2022 through May 31, 2022 to be correct.

THEREFORE, the Notice of Taxpayer Initiated Refund Determination dated September 15, 2022, is hereby APPROVED.

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.
