

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-220-139-008
	)	
Petitioner.	)	DECISION
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On August 30, 2019, \_\_\_\_\_ (Petitioner) protested the Notice of Deficiency Determination (Notice) issued by the Sales/Fuels Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) on August 16, 2019. The Commission, after reviewing all information, hereby upholds the Bureau’s findings for the reasons detailed below.

**Background and Audit Findings**

Petitioner was contacted September 2017, to start a sales and use tax audit. Petitioner directed the Bureau to \_\_\_\_\_ CPA (Representative) for questions concerning the accounting of the company and to handle the review. After receiving a valid POA, the Bureau informed the Representative of the conversation held with Petitioner and what information would be needed to conduct the review.

Between September 2017 and July 2019, the Bureau repeatedly tried to contact Representative asking for the requested documentation to conduct the review. Petitioner’s Representative provided quarterly General Ledger reports covering the review period in July 2018 and ST101 exemption forms in October 2018. The Bureau’s review was conducted using only these two sources of information as the Representative was unable to provide all the information requested.

On August 16, 2019 the Notice was issued, proposing sales and use tax and interest for the audit period January 1, 2014, through December 31, 2016, in the total amount of \$1,465,370.

Petitioner's Representative filed a timely appeal and petition for redetermination of the Notice, claiming to have the documentation previously requested. On September 20, 2019, Representative emailed all sales invoices for the review and let the Bureau know she was still gathering ST-101's from Petitioner's customers. Based on this information the Bureau was able to reduce the original deficiency to a modified amount of \$639,009. The Bureau also requested all purchase invoices for the items listed on the use tax schedules but this information was never provided.

The case was forwarded to the Tax Commission's Appeals unit (Appeals) in September 2021. Appeals sent hearing right letters to Petitioner and Representative. Petitioner responded requesting an informal hearing which was held on May 24, 2022. Documentation was the only issue discussed during the hearing. Representative requested an opportunity to provide additional information and was given a due date of June 30, 2022. When no information was received, Appeals contacted Representative granting one last extension until August 19, 2022. Appeals received an e-mail from Representative on that date, stating they were still working on obtaining documentation for the audit schedules. Representative also stated it was too burdensome to gather the requested documents. To date, Representative has not provided supporting documentation or tried to contact the Commission.

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

Petitioner, located in Idaho, is a manufacturer and wholesaler of various farm and ranch products for the care of livestock. Over the course of three years and several waivers extending the statute of limitations the Bureau was only able to obtain Petitioner's general ledger and one valid ST101.

Petitioner is required to maintain proper business records per Idaho Code section 63-3624(c) which states:

“[E]very seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction.”

In this case, Petitioner did not provide records to substantiate sales tax paid on equipment and material purchased and sold. Although Petitioner disagrees with the amount held taxable, they did not provide documentation to refute the Notice and the Bureau’s findings.

Idaho Code section 63-3622(a) explains that all sales are subject to sales and use tax unless an exemption applies.

**63-3622. Exemptions -- Exemption and Resale Certificates -- Penalties.**

(a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

The burden of proof remains with the retailer until the purchaser provides to the retailer an exemption or resale certificate. Petitioner nor their Representative were able to provide the necessary documentation. Representative has asserted that the amount of documentation requested was too burdensome to be able to comply. However, the audit plan was agreed upon by the Bureau, Petitioner, and Representative in the beginning of the review. Representative did not request to revisit the plan at any time during this process.

**Conclusion**

Petitioner and their appointed Representative were given four years to provide documentation for the review, but they provided very little information. Without adequate documentation to the contrary, the Bureau has no choice but to assume all sales and purchases made by Petitioner are taxable per Idaho law.

A deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the 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.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence.

Therefore, the Commission finds the deficiency amount calculated in the modified Notice by the Bureau to be a reasonably accurate representation of Petitioner’s sales and use tax liability for the period January 1, 2014 through December 31, 2016.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed the addition and found it to be appropriate per Idaho Code section 63-3045 and has updated interest accordingly. Interest is calculated through February 28, 2023 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 dated August 16, 2019, 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 and interest:

<u>TAX</u>	<u>INTEREST TO</u>	<u>INTEREST TO</u>	<u>TOTAL</u>
	<u>8/31/21</u>	<u>02/28/23</u>	
\$606,041	\$32,968	\$20,343	\$659,352

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.

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