

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-348-387-840
)	
Petitioner.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>)	

(Petitioner) protested the Notice of Deficiency Determination (Notice) issued by the staff of the Sales/Fuels Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission). The Notice proposed sales and use tax and interest for the audit period April 1, 2018, through March 31, 2021, in the amount of \$34,357.

The Commission hereby upholds the Notice for the reasons detailed below.

Background and Audit Findings

Petitioner is an _____ and _____ company that creates craft environments for _____ homes. Customers can contract Petitioner to design only, design and project management, or design, supply, and project management. The design plans created by Petitioner include specific vendors and suppliers for the furniture and materials to create the environments they design. The customer has the option to purchase furniture and materials themselves or have Petitioner procure it for them.

The Bureau contacted Petitioner on October 27, 2021 to discuss conducting a sales and use tax audit of the business. The Bureau requested an electronic download of Petitioner’s general ledger for the review period along with sales invoices, purchase invoices, bank & credit card statements, asset additions and deletions, resale certificates, and supporting documentation for their sales and use tax returns. The Bureau used the requested information to determine Petitioner’s compliance with Idaho sales and use tax code and rules for their business.

The Bureau discovered two main issues while conducting the review, storage fees (Freight In) and procurement fees. The Bureau determined Petitioner should have included the storage and procurement fees in the sales price subject to Idaho sales tax and issued a Notice On October 20, 2022. Petitioner appealed the Notice arguing the fees held taxable by the Bureau were non-taxable labor/service charges. Petitioner argued the procurement fees equated to professional services and the storage fees were delivery fees. The Bureau acknowledged the protest and sent the file to the Tax Commission's Appeals Unit (Appeals) for administrative review. Appeals sent Petitioner a letter outlining the options for redetermining a protested Notice. Petitioner responded, requesting an informal hearing held May 18, 2023. Petitioner and the Commission discussed the inclusion of the fees in sales price. Petitioner did not provide additional information. Therefore, the Commission having reviewed all information, issues its decision.

Relevant Tax Code and Analysis

Petitioner is a designer, contractor, broker, or contractor/retailer depending on the terms of the contract with their customer. The contract determines Petitioner's responsibility for sales and use tax and which materials and services are taxable. Petitioner's contracts create unique situations that have differing tax responsibilities.

A. DESIGN SERVICES ONLY: (IDAPA 35.01.02.011.01(a))

Petitioner is providing a professional service by designing schematics or blueprints of craft environments for its customers. The customer will hire a different project manager to conduct the upgrades and purchase the materials themselves or from a different broker. In this situation, Petitioner is providing a professional service and should not charge tax to their customer.

B. DESIGNER AND PROJECT MANAGEMENT: (IDAPA 35.01.02.012)

Petitioner again creates the schematics for the craft environments but acts as the project manager as well. The schematics provided by Petitioner are not taxable to the customers. The customer or project manager may purchase materials given to subcontractors to conduct real property improvements. The customer (project owner) purchases the furniture and fixtures from someone other than Petitioner. Petitioner is only acting as a contractor for this project. Responsibility for taxes paid on materials used to improve the realty lies with the contractor who purchases them or the contractor who received the materials to complete the job. Idaho Code Section 63-3609(a) stipulates that contractors are the consumers of the materials used by them to improve the real estate. If the project owner purchases materials ex-tax and gives them to project manager or sub-contractor, either could owe use tax on the non-taxed materials.

C. DESIGNER, PROJECT MANAGER, AND BROKER: (IDAPA 35.01.02.014)

Petitioner in this situation provides a professional service, acting as a contractor, and retailing furniture and fixtures to the customer. Each part of the contract has its own taxing requirements. The schematics provided to their customers are a professional service and non-taxable. The Project Manager portion of the contract is the same as in situation B. Petitioner is acting as a broker for the furniture and fixtures and is responsible for charging sales tax to its customers on these items. The furniture and fixtures are standalone pieces sold to Petitioner's customers as a retail sale. Petitioner will charge sales tax to the customer on the "Sales Price" for the furniture and fixtures. Idaho Code Section 63-3613(a) explains the items included in the sales price subject to sales tax.

63-3613. SALES PRICE. (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
2. The cost of materials used, labor or service cost, losses, or any other expense.
3. The cost of transportation of the property prior to its sale.
4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

The Bureau held "procurement fees" and "storage fees" for furniture and fixtures taxable. The procurement fee is part of the sales price under IDAPA 35.01.02.043.02(c) which states, "any commission or other form of compensation for the services of an agent, consultant, broker, or similar person". Petitioner charges its customers the procurement fee to acquire tangible personal property. Therefore, the procurement fee is part of the sales price and taxable.

Petitioner believes the storage fees charged to their customers are non-taxable transportation charges under Idaho Code Section 63-3613(b)(7) which excludes delivery and handling charges for transportation of tangible personal property to the consumer. Petitioner incurred the storage fees before final delivery of the furniture and fixtures to the jobsite. Petitioner needed a place to store the furniture and fixtures out of the way while they completed the construction of the craft environment. Petitioner maintains right power and possession of the tangible personal property throughout storage. Under Idaho Code Section 63-3613(a)(2) sales prices include the cost of materials used, labor or service cost, losses, or any other expense. The storage fees are an expense incurred by Petitioner and passed onto its customer at final delivery of the tangible personal property. Therefore, the storage fees become part of the sales price subject to tax.

Conclusion

As a retailer/contractor, Petitioner has an obligation to understand the complexities of sales and use tax law for retail sales of tangible personal property and use of tangible personal property for real property improvements. Each job performed by Petitioner has differing taxing requirements depending on the type of contract Petitioner enters with their customers. The timing of the sequence of events in the contract determines taxation. The procurement fees and storage fees charged by Petitioner on the sale of furniture to its customers is part of the sales price subject to tax.

A Notice of Deficiency Determination issued by the Commission is presumed to be accurate. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The burden is on Petitioner to show the deficiency is erroneous. *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Petitioner was unable to show the Notice issued by the Bureau to be incorrect. Therefore, the Commission upholds the Notice issued by the Bureau for the period April 1, 2018, through March 31, 2021.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed the addition, found it to be right per Idaho Code section 63-3045. Interest 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 October 20, 2022, 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</u>	<u>TOTAL</u>
\$31,332	\$4,684	\$36,016

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.
