

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-462-289-408
)	
Petitioner.)	DECISION
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(Petitioner) protested the Notice of Deficiency Determination (Notice) issued by the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission). The Notice proposed sales and use tax, penalty, and interest for the audit period March 1, 2019, through July 31, 2021 (Audit Period), in the amount of \$67,598.

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

Background and Audit Findings

Petitioner owned and operated a franchise primarily dedicated to offering classes to members. Petitioner sold memberships and packages that allowed to reserve one of the limited spots in a class. Petitioner provided everything needed for the classes, including free use of locker rooms, free toiletries, and filtered water. Petitioner also sold trademarked products such as clothing and water bottles to customers at their facility.

The Bureau contacted Petitioner on August 27, 2021, to discuss conducting a sales and use tax audit of the business. The Bureau held a meeting with Petitioner to discuss audit process, applicable sales and use tax law, and records required to complete the audit. The Bureau used Petitioner’s general ledger to obtain sales amounts, fixed asset purchases, and general expenses over the audit period. The Bureau reviewed this information for proper taxation in accordance with Idaho sales and use tax law.

The Bureau compared sales reported on Petitioner's Form 850 sales and use tax returns to sales recorded in Petitioner's general ledger. The Bureau gave Petitioner a credit for sales tax collected and remitted to Idaho and held taxable unreported sales, non-taxed memberships, and packages reported on Petitioner's sales and use tax returns. The Bureau requested purchase invoices for fixed asset purchases and expenses during the audit period. Petitioner did not provide the invoices to verify tax paid at time of purchase, therefore the Bureau applied use tax to fixed asset and supply purchases for the Audit Period.

The Bureau issued a Notice August 22, 2022, after an extended period of no contact from Petitioner. Petitioner appealed the Notice arguing the sales held taxable by the Bureau were for instructional fees. Petitioner did not protest the taxation of fixed asset purchases and expenses. 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 which was held July 24, 2023. Petitioner and the Commission discussed the various code and rules pertaining to recreation including admission fees and the requirement for separately stated instructional fees in the sales price. Petitioner did not provide additional information to support their stance; therefore, the Commission, having reviewed all information, issues its decision.

Relevant Tax Code and Analysis

Petitioner uses IDAPA 35.01.02.129.03, entitled, "Use of a Recreational Facility, Instructional Fees" to make claim they are not required to collect sales tax on instructional fees.

129. USE OF A RECREATIONAL FACILITY, INSTRUCTIONAL FEES, AND PARI-MUTUEL BETTING (RULE 129).

01. Use of a Recreational Facility. Charges or fees to procure the use of a facility, facilities, or building for the purpose of recreation or physical conditioning are taxable. (3-31-22)

02. Dues. Dues paid to fraternal organizations such as the Elks, Eagles, Masonic Order, or similar organizations are not normally paid primarily for the use of

facilities for recreation; in such cases, recreational use of facilities will be incidental. However, any separate, identifiable fees charged by such fraternal organizations, in excess of ordinary membership dues and fees, specifically for the use of recreational or physical conditioning facilities will be taxable including, but not limited to, bowling fees, green fees, swimming fees, court fees, or equipment usage fees. (3-31-22)

03. Instructional Fees. **Separately stated instruction fees, such as for jazzercise, aerobics, dance, and swimming are not taxable.** (emphasis added)

While IDAPA 35.01.02.129.03 does state instructional fees are not taxable, it also clearly requires a separate statement of the instructional fees. Petitioner sold lump sum memberships and packages that did not separate out any amounts. Because of this, the Commission cannot use IDAPA 35.01.02.129.03 to determine the taxability of memberships and packages.

Petitioner's protest describes its business as an "Instructor-based recreational facility". Petitioner sold access to its facilities for recreational purposes. The memberships and packages Petitioner sold to customers were for admission to classes and the use of facilities. Idaho Code sections 63-3612(2)(e) and (2)(f) explain the taxability of admissions and use of recreational facilities or equipment.

Idaho Code section 63-3612, sets forth the following:

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged, or bartered:

(e) Admission to a place or for an event in Idaho, provided that an organization conducting an exempt function as defined in section 527 or exempted by section 501(c)(3) of the Internal Revenue Code, as incorporated in section 63-3004, Idaho Code, and collecting any charges for attendance at the aforementioned event, shall not have those admission charges be defined as a sale if the event:

- (i) Is not predominately recreational or commercial; and
- (ii) Any included entertainment value is minimal when compared to the charge for attendance; and
- (iii) Such entity has paid sales and use tax on taxable property or services used during the event.

(f) The use of or the privilege of using tangible personal property or facilities for recreation.

The Bureau properly applied Idaho Code section 63-3612 to Petitioner's sales of memberships and packages to customers. As stated previously, the memberships and packages Petitioner

offered included much more than instructional fees. Idaho Supreme Court Case, *Crane Creek Country Club v. Idaho State Tax Commission* (122 Idaho 880,1992), affirms this. *Crane Creek* disputed that its charges were not for use or privilege of using recreational facilities. The Idaho Supreme Court ruled in *Crane Creek*:

...Crane Creek argues that because the fees and assessments are charged “wholly for the purpose of paying the expenses of conduct club affairs,” ... or, to put it another way, “to meet operating and overhead costs,” ... the payments are not receipts for the privilege of using the facilities and are therefore not subject to the sales tax. This argument is without merit, for under the plain language of the statute the relevant inquiry in determining the taxability of the event is the quid pro quo between the remitter and the recipient, not the ultimate use to which the recipient applies the receipts. It is clear that what the Crane Creek member receives for their payment is the privilege to use the Crane Creek facilities, as Crane Creek's own Bylaws provide that nonpayment results in an automatic suspension of membership and forfeiture of all rights to use Crane Creek facilities...

Petitioner makes a similar claim in stating the membership fees are for instruction only. The membership fees first and foremost grant Petitioner's customers access to the recreational facility and the ability to reserve a spot in classes offered.

Petitioner also mentions in its protest that the Notice issued by the Commission effectively denies them, “equal protection of laws in violation of the equal protection clause and the protections afforded by the Fifth and Fourteenth Amendments to the United States Constitution and amounts to selective enforcement of the sales & use regulations and/or law. Petitioner then reiterates its argument that there is no basis in Idaho law that supports the assessment of sales and use tax on instructional fees and/or the type of services they offer.

Idaho sales tax law under title 63 chapter 36 applies to all businesses making sales in Idaho, and Idaho Code section 63-3612(2)(e) & (2)(f) specifically address admissions to and use of recreational facilities. Furthermore, this code section is applicable to all like or similar businesses in Idaho offering recreational activities. This satisfies the requirements of the Fifth Amendment

concerning equal protection and evidence of Idaho law that would support the assessment of sales and use tax. The Fourteenth Amendment of the Constitution concerns the United States Congress power to govern interstate commerce. All sales of memberships by Petitioner are for use of a facility located in Idaho and are nontransferable to other franchise locations. Therefore, these transactions are intrastate transactions, meaning that they occur wholly within the State of Idaho, and do not concern an interstate commerce issue.

Conclusion

The diversity in recreational activities and specialization of facilities for these activities has grown in Idaho. The Commission's application of law pertaining to admissions and recreation has remained constant in practice during the industry growth. Idaho law states instructional fees are non-taxable if separately stated in the sales price charged to customers. Petitioner did not separate out any instruction fees in their charges to customers. Rather, they charged a lump sum amount to customers for access and use of the facilities.

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 penalty and interest to the sales and use tax deficiency. The Commission reviewed the additions, found them to be right per Idaho Code sections 63-3045 and 63-3046. 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, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$59,275	\$4,416	\$8,956	\$72,647

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.
