

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-512-866-816
	)	
Petitioner.	)	DECISION
_____	)	

(Petitioner) protested the Notice of Deficiency Determination (Notice), issued by the Tax Discovery Bureau (Bureau). The Notice issued March 2, 2022, proposed penalty for the period February 1, 2022 through March 2, 2022, in the total amount of \$3,000. Based on the reasons stated below, the Idaho State Tax Commission (Commission) upholds the Bureau’s Notice.

Petitioner is in the business of \_\_\_\_\_ and conducts sales and repair orders internationally. For all repairs in the United States, Petitioner’s designated repair technician resides in Idaho, which according to the Bureau establishes Petitioner as a retailer required to have a seller’s permit. Petitioner disagreed with the Bureau’s determination.

**Petitioner’s Protest**

Petitioner believes, since they are headquartered in Canada, all sales are generated in Canada and are only taxable in Canada. Petitioner argues the designated repair technician is not “...an individual acting through contract in Idaho as an agent with no authority to contract.” The protest goes further to say:

In no way was nexus ever agreed to, repairing equipment for _____ customers. its office and warehouse in Canada. traveling salespeople or representatives in Idaho.	(	_____ has a US contractor is a Canadian company with does not have a physical presence of
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## Relevant Tax Code and Analysis

Idaho Code section 63-3610 defines the term “retailer” and goes further to describe them in Idaho Code section 63-3610(b), which states: “Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.”

In the present case, when Petitioner is contacted by their customer in the United States of America, Petitioner puts that customer in contact with the repair technician in Idaho. The repair technician will receive the equipment in need of repair, and if necessary, will ship a “loaner item” for the customer to use on a “as needed” basis. The Commission agrees with the Bureau's determination Petitioner is a retailer. Idaho Code section 63-3611(3) discusses the parameters for a “retailer engaged in business in this state” in pertinent part:

(3) The term "retailer engaged in business in this state" includes any of the following:

(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly, or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business or maintaining a stock of goods.

(b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing or the taking of orders for any tangible personal property.

...

(d) Any retailer engaging in any activity in connection with servicing or installing tangible personal property in this state.

(e) Any retailer with substantial nexus in this state within the meaning of section 63-3615A, Idaho Code.

...

(g) (i) Any retailer that has an agreement, directly or indirectly, with one (1) or more persons engaged in business in this state pursuant to this section under which, for a commission or other consideration, the persons refer potential purchasers to the retailer directly, whether by a link on an internet website, written or oral presentation, or otherwise;

Petitioner's relationship with the repair technician falls within the definition of Idaho Code section 63-3611(3), making it a retailer engaged in business in Idaho. First, Petitioner's company website identifies an Idaho resident as the repair technician for repairs in the United States of America. The website lists the individual's name, home address, and personal cell phone number and identifies them as a point of contact for the company. The website also designates the Idaho address as an authorized repair facility for the company. Further, Petitioner ships items of tangible personal property to be stored and held in Idaho. Petitioner is a retailer engaged in business in Idaho.

Idaho Code section 63-3615A defines when substantial nexus applies to a retailer, as follows:

- (1) Subject to the limitation in subsection (2) of section 63-3611, Idaho Code, a retailer has substantial nexus with this state if both of the following apply:
  - (a) The retailer and an in-state business maintaining one (1) or more locations within this state are related parties; and
  - (b) The retailer and the in-state business use an identical or substantially similar name, trade name, trademark, or goodwill to develop, promote or maintain sales, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.

Based on the above definition, nexus is not necessarily what is agreed to, as Petitioner argues, but a descriptive word for a structured business. Petitioner has substantial nexus with Idaho through the conduct and relationship Petitioner has with their repair technician. The repair technician provides a direct service on behalf of and under Petitioner's name. Petitioner's website advertises and promotes that their repair technician is the only authorized repair person in the United States. The fact that the repair technician stores items in order to promote or maintain Petitioner's United States market further supports substantial nexus in Idaho.

### **Does the Retailer need to be Permitted?**

Idaho Code section 63-3620(a) states:

Every retailer engaged in business in this state, before conducting business within this state, shall file with the state tax commission an application for a seller's permit. Every application for a permit shall be made upon a form prescribed by the state tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state tax commission may require.

Petitioner is engaged in business in Idaho and is therefore required to be permitted. Idaho

Code 63-3620(g) specifies;

Any person who is a responsible person, as defined in section 63-3627, Idaho Code, of such a business shall, after receiving written notice from the state tax commission, be subject to a civil penalty not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense, which the state tax commission may assess as a deficiency pursuant to section 63-3629, Idaho Code.

### **Conclusion**

Based on the information available, the Commission finds Petitioner was an Idaho retailer required to obtain an Idaho seller's permit. Petitioner has yet to acquire the necessary permit. The Notice asserting penalty for noncompliance is appropriate.

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 \$3,000. (THREE-THOUSAND DOLLARS AND ZERO CENTS).

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.

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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