

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-535-304-704
)	
Petitioner.)	DECISION
)	

On February 16, 2024, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Tax Commission) issued a Notice of Taxpayer Initiated Refund (Notice) to [REDACTED] (Petitioner) denying a portion of the refund requested for the period of February 1, 2020, through February 28, 2022. The Tax Commission, having reviewed the matter, hereby upholds the Notice issued by the Bureau.

BACKGROUND

Petitioner is headquartered in [REDACTED] Idaho. They are one of the largest [REDACTED] [REDACTED] [REDACTED] retailers in the United States of America, with over 2,200 stores, in 34 states and the District of Columbia, which includes the [REDACTED] [REDACTED] [REDACTED] Distribution Facility (Distribution Facility) located in [REDACTED] Idaho. The Distribution Facility supports various retail [REDACTED] stores across multiple states within the western region of the United Stated of America. All locations, including retail stores and the Distribution Facility in Idaho are under one sales and use tax permit.

Petitioner submitted an Idaho Form TCR, Sales Tax Refund Claims (TCR) requesting a refund of \$709,163.28 listing the following “Statement of Grounds”:

- Use tax was incorrectly remitted on items shipped outside the state of Idaho.
- Use tax was remitted in addition to sales tax already paid to the vendor at the time of purchase.

- Use tax was erroneously remitted on purchases intended to qualify for the production exemption.
- Use tax was incorrectly remitted on containers used for resale.
- Use tax was mistakenly remitted on transactions that qualify for the pollution control exemption.
- Use tax was improperly remitted on purchases eligible for the research and development exemption.

In addition to the Statement of Grounds, Petitioner provided an electronic copy of their extensive use tax accrual records, 261,233 transactions. Each transaction represents a withdrawal from inventory stored at the Distribution Facility. The Bureau reviewed the use tax accrual records and determined it would be prudent to categorize the transactions into two groups: “Production” and “Resale,” due to the differing requirements of the exemptions for which Petitioner is requesting a refund. The Bureau discussed this categorization with Petitioner, and Petitioner agreed. After the Bureau completed their categorization, the Production transactions totaled \$17,824.22 and the Resale transactions totaled \$691,339.06.

The Bureau reviewed the Production transactions and identified use tax paid in error in the amount of \$13,999. This amount was refunded to Petitioner.

The Bureau reviewed the Resale transactions but needed more information before approving that portion of the refund. The Bureau requested Petitioner provide sales invoices and shipping documents to affirm whether a resale to another entity took place. Petitioner did not provide the requested documentation and instead asserted that purchase documentation was unnecessary because sales tax was charged and collected on each withdrawal.

The Bureau, lacking adequate documentation to approve the refund claim, issued the Notice, denying all but \$13,998.80, the use tax remitted in error for the Production transactions. Petitioner filed a timely protest of the Notice, asserting the partial refund denial was incorrect for two reasons: 1) Petitioner is entitled to a refund of over-remitted Idaho use tax on inventory goods initially purchased with the intent to be resold. The items purchased and placed in inventory are intended for resale and were in fact resold. 2) Under IDAPA 35.01.02.72, Petitioner is due to a refund on erroneously remitted use tax on items designated for resale but then shipped out of state.

Petitioner did not assert any contention on the transactions categorized as Production and are only concerned about the transactions identified for Resale.

The Bureau acknowledged Petitioner's protest and forwarded the case to the Tax Commission's Appeals Unit (Appeals) for administrative review. Appeals sent Petitioner a letter informing them of the options available for redetermining a Notice. Petitioner responded, requesting an informal hearing.

During the informal hearing Petitioner stated, "The ultimate issue is whether [REDACTED] is entitled to the temporary storage exemption...for [REDACTED] [REDACTED] items that are purchased mostly from vendors outside of Idaho and then shipped to their [REDACTED] warehouse in [REDACTED] Idaho before their shipment to [REDACTED] stores, some in Idaho, and outside of Idaho." Petitioner described their business practice, which was to purchase items, providing their vendors with an exemption form, and store them at their Distribution Facility for use in Petitioner's stores or for resale. Petitioner also explained that because the final user of the purchased products was unknown until the items were withdrawn from inventory, they incorrectly remitted use tax.

Petitioner was asked during the hearing if sales tax was charged to the final user of the items withdrawn from inventory and if so, could they provide documentation, i.e. sales invoices

and shipping documentation, to support that. Petitioner argued that information was not necessary as charging sales tax is not a requirement under the temporary storage exemption statute. Petitioner did not provide any additional documentation for the Tax Commission's consideration during or after the informal hearing. Therefore, the Tax Commission will issue its decision based on the information presently available.

LAW AND ANALYSIS

For Petitioner to be entitled to a use tax refund, they must show they remitted tax in error to the state of Idaho. Here, Petitioner asserts they improperly remitted use tax when they withdrew items from their inventory at the Distribution Facility and used them outside Idaho or resold them. But, when asked for evidence to substantiate their claim, Petitioner failed to provide it.

Petitioner is requesting a refund for items used for store operations in the course of Petitioner's business, not items that it sells in its stores. No evidence was submitted to support the claim that any of the items were sold to third parties.

Petitioner provided its vendors with an exemption certificate claiming the items were purchased for resale. Where a purchaser provides a resale exemption certificate, the responsibility to establish the facts giving rise to the exemption shifts to the purchaser and the purchaser bears all responsibility and liability for any sales tax due on the transaction. Idaho Code section 63-3622. As a result of providing the resale exemption certificate, Petitioner has the burden of establishing that the items purchased qualify for the resale exemption.

Petitioner asserts that the purchased items were used in its retail outlets and/or resold to other retailers. To substantiate this claim, Petitioner must provide copies of sales invoices showing the sale of the tangible items in question, shipping information to show the items were sent to a purchaser, and any other documentation demonstrating that the sales occurred. Petitioner provided

no such documentation. There is no evidence to support the existence of any sales, and the Tax Commission finds that the items that are the subject of this claim were purchased for Petitioner's own use. Petitioner has failed to establish that the items qualify for the resale exemption and is therefore liable for the tax. Idaho Code section 63-3622. Petitioner's payment of use tax on the items merely satisfied its tax liability on the purchase transactions.

Additionally, Petitioner argues that because the personal property on which they seek a refund was later transported out of Idaho it is exempt from Idaho use tax pursuant to IDAPA 35.01.02.72.04a. Petitioner's interpretation is incorrect. That rule applies to items that are being transported through the state and are only temporally held within the state. This means that the property, when purchased, already has a known destination outside Idaho. Property brought into Idaho and held, with an unknown destination, is not held for transport outside the state. It is in storage and subject to use tax. IDAPA 35.01.02.72.03.

CONCLUSION

The information Petitioner provided shows the purchased items were for use in its stores inside and outside Idaho and were not designated for any place until they were withdrawn from storage. The use tax is expressly imposed on storage of personal property in Idaho. Idaho Code section 63-3621. The property that is the subject of the request for refund was stored in Idaho and not merely retained for the express purpose of transportation outside Idaho. As a result, the property was subject to Idaho use tax. Petitioner did not remit use tax in error. There was no overpayment of use tax. Therefore, the Tax Commission upholds the Notice of Refund Determination issued to [REDACTED] [REDACTED]

THEREFORE, Petitioner's refund claim is denied. The Notice of Refund Determination dated February 16, 2024, is hereby APPROVED, AND MADE FINAL.

<u>REFUND</u> <u>CLAIMED</u>	<u>AMOUNT</u> <u>DENIED</u>	<u>AMOUNT</u> <u>REFUNDED</u>	<u>INTEREST</u>	<u>TOTAL</u> <u>REFUNDED</u>
\$709,163	\$695,163	\$13,999	\$1,471	\$15,470

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2025,
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.

[REDACTED]

[REDACTED]