

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-586-643-968
)	
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 (Tax Commission). The Notice proposed sales and use tax, penalty, and interest for the audit period January 1, 2015, through December 31, 2021, in the amount of \$21,423. The Tax Commission hereby upholds the Notice for the reasons detailed below.

Background and Audit Findings

Petitioner is a heating and air conditioning service and installation company. When Petitioner installs new heating and air equipment in a building they are acting as a contractor. When Petitioner is servicing heating and air equipment already installed, they are a repair shop. Petitioner also makes retail sales of parts and equipment without installation. Petitioner did not have an Idaho sellers permit for the period reviewed.¹ The Bureau contacted Petitioner February 25, 2021, to begin a review of Petitioner and its sister corporation to determine compliance with Idaho sales and use tax code and rules. To conduct the review, the Bureau requested a copy of Petitioner’s general ledger, sales invoices, and purchase invoices, credit card statements, accounting records, supporting documentation for sales and use tax returns, and sales exemption certificates.

¹Petitioner still has not obtained a sellers permit as of the date of this decision.

The Bureau reviewed all sales and purchases made during the review period for proper taxation. The Bureau discovered sales tax collected and not remitted and sales tax paid in error on purchases for resale. A Notice was issued on October 6, 2022 to Petitioner for sales and use taxes owed for the review period. Petitioner responded to the Notice, not with any specific objection, but instead with a request for a 20 percent reduction in the tax owed with interest adjusted accordingly. The Bureau responded informing Petitioner they intended to forward the file to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals sent Petitioner and their representative a letter outlining the options for redetermining a Notice. Appeals tried to contact Petitioner's representative by phone in June 2023, but did not receive a response. Therefore, the Tax Commission will decide this matter based on the information presently available.

Relevant Tax Code and Analysis

Petitioners' Notice consisted of sales and use tax issues. The sales tax issues discovered were sales tax collected and not remitted and non-taxed sales not supported by an exemption certificate. Idaho Code section 63-3623A addresses the collection of sales tax by retailers.

63-3623A. TAXES AS STATE MONEY. All moneys collected by retailers in compliance with this chapter shall, immediately upon collection, be state money and every such retailer shall hold such money for the state of Idaho and for payment to the state tax commission in the manner and at the times required in this chapter. Such money shall not, for any purpose, be considered to be a part of the proceeds of the sale to which the tax relates and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the retailer to any creditor other than the state tax commission.

In this case, Petitioner collected sales tax from its customers but failed to remit it to the State. The Idaho code is clear, the monies collected by a retailer is state money to be held until payment to the state tax commission in the manner and time required. Petitioner has not disputed that its sales were taxable, nor has it disputed that it collected tax from customers. As an Idaho retailer,

Petitioner had a responsibility to collect and remit sales tax on all sales subject to the Sales Tax Act but failed to do so.

The use tax issues identified in the review were purchases of tangible personal property. In Idaho, all purchases of tangible personal property are subject to tax unless an exemption applies. *See* Idaho Code section 63-3619. With regards to exemption and resale certificates, Idaho Code section 63-3622 provides the following, in part:

(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 certificate or resale certificate, in which case the purchaser shall bear the burden of establishing the facts giving rise to the exemption.

Petitioner has not provided the Tax Commission with any evidence to show that the purchases held taxable in the Notice should have qualified for an exemption. Petitioner made non-taxed material purchases for real property improvements. IDAPA 35.01.02.012 & IDAPA 35.01.02.014 were used as support for administering use tax. Both rules stem from Idaho Code section 63-3609(a):

63-3609. RETAIL SALE — SALE AT RETAIL. The terms "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

As a contractor improving real property, Petitioner is considered the end user of the materials purchased to conduct the improvements. Petitioner was unable to provide to the Tax Commission evidence proving their non-taxed purchases should be exempt from use tax. Idaho code and rules were properly administered in the assessment of use tax on Petitioner's purchases.

Conclusion

On appeal, a deficiency determination issued by the Tax Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” See *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 Tax 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. As a result, the Tax Commission will uphold the Notice.

Absent information to the contrary, the Tax Commission finds the Notice issued by the Bureau to be a reasonable representation of Petitioner’s sales and use tax liability for the period January 1, 2015, through December 31, 2021.

The Bureau added penalty and interest to the sales tax deficiency. The Tax Commission reviewed the additions and found them to be applicable 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 6, 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>
\$17,935	\$897	\$3,910	\$22,742

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 _____ 2024.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2024,
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.
