

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-850-639-360
)	
)	
Petitioners.)	DECISION

(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 use tax, penalty, and interest for the audit period January 5, 2015, through April 30, 2020, in the amount of \$229,795.

The Commission, after a thorough review of all relevant information hereby amends the Notice for the reasons detailed below.

Background and Audit Findings

Petitioner is a contractor for the construction of new buildings and homes in Idaho. The Bureau conducted an audit to determine Petitioner’s compliance with Idaho’s sales and use tax laws. The Bureau requested specific information from Petitioner to complete the review. Petitioner provided accounting and financial records that were incomplete and/or deficient. The Bureau calculated the tax due using summary data for expenses obtained from an incomplete general ledger and income tax returns for the same period. The summary amounts in the data were payments on account made to vendors that consisted of multiple invoices. General ledger entries that looked like possible asset additions were held taxable. The Bureau issued a Notice on May 6, 2022, based on the limited information provided by Petitioner.

Petitioner protested the findings of the Bureau on July 6, 2022. The Bureau acknowledged the protest and sent the case to the Appeals Unit (Appeals). Appeals scheduled and held an

informal hearing in October 2022 to discuss the case. Petitioner explained issues that occurred in obtaining the information requested by the Bureau and why. The Commission set a final date for Petitioner to provide the requested information. The Appeals specialist was able to obtain the missing purchase invoices from the Bureau. Petitioner provided the invoices just before the Bureau issued the Notice. The Appeals specialist used the invoices to verify tax paid and reduced the Notice. Appeals offered Petitioner to close the review for the new amount of the Notice. Petitioner on May 23, 2023, declined to settle and asked for a decision on the case.

Analysis and Relevant Tax Code

Petitioner is a contractor that constructs _____ for new houses and buildings. In Idaho, contractors are the end user of all tangible personal property purchased for use in the business or to execute a construction contract. Idaho Code section 63-3609(a) and IDAPA 35.01.02.012.01 both assign responsibility:

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.

IDAPA 35.01.02.012 CONTRACTORS IMPROVING REAL PROPERTY (RULE 012). Sections 63-3609(a), 63-3621, 63-3615(b), 63-3622B, Idaho Code

01. In General. This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable.

The Notice issued by the Bureau consisted of use tax calculated (EXA) from the data contained in three use tax schedules. The first schedule was a purchase reconciliation comparing total purchase expenses from income tax form 1125-A line 2 to the purchase totals from

Petitioner's general ledger. The Bureau reduced the total purchase numbers obtained from the general ledger by the summary purchase numbers for certain suppliers. The adjustments made by the Bureau created the variances held taxable on the EXA for that schedule (U-1). The Commission found the amounts held taxable for these variances are not due to Petitioner error, but from adjustments made by the Bureau in error. Therefore, the Commission removed schedule U-1 from the use tax calculation on schedule EXA.

The second schedule was a detailed review of purchase accounts of interest from Petitioner's general ledger. The amounts reviewed in the schedule by the Bureau consisted of individual transactions and payments on account that included multiple invoices. Petitioner provided purchase invoices for the suppliers in the schedule and the Bureau reviewed the invoices for proper taxation. The Bureau found errors in the taxation of environmental fees by the vendor. IDAPA 35.01.02.043.02(f) explains that environmental fees and disposal fees are considered "services agreed to be rendered as part of the sale" and included in the sales price subject to tax. The Bureau informed Petitioner about the issue with environmental fees in a note dated August 5, 2022. The Bureau was unable to match the invoices reviewed to the summary amounts held taxable in the schedule. The summary numbers from the general ledger were statements on account that consisted of numerous invoices in one payment. The journal entry in the general ledger did not contain a description listing which invoices made up the amount for the transaction.

After the informal hearing, Petitioner provided detailed lists showing the invoices included in the summary amounts paid to suppliers. Appeals reviewed the invoice listing and was able to verify the purchase invoices included in the summary payments in the general ledger. Appeals also verified that environmental fees on the invoices were untaxed until October 2018.

Appeals discussed the issue with Petitioner and suggested reviewing a sample amount of invoices from each year to obtain an error rate to apply to all summary amounts in the schedule before the change made by the vendor in October 2018. The summary amounts in the schedule after the change made in October 2018 were reduced to zero. Appeals and Petitioner agreed that a minimum of ten invoices for years 2016, 2017, and 2018 would be reviewed by Appeals for proper taxation. Appeals was able to significantly reduce the amounts held taxable in the schedule (U-2).

The third schedule was a review of asset purchases obtained from the income tax returns and unexplained distributions in the general ledger to an employee. After further review by Appeals, the distributions in the general ledger were travel and entertainment reimbursements that would not be taxable to Petitioner. Appeals was able to verify tax paid on most of the assets obtained from the income tax returns except for a 2006 BMW purchased in 2016. The car remained on schedule (U-3).

Conclusion

Petitioner was able to substantiate the need to adjust the Notice issued by the Bureau. Appeals adjusted the schedules if supporting documentation was available for review. The Commission adjusts the Notice for the reasons stated above. Appeals reduced the original deficiency of \$229,795 in use tax, penalty, and interest to \$14,089 in use tax, penalty, and interest after all adjustments were made.

The Commission finds the adjusted Notice to be a reasonably accurate representation of Petitioner's use tax liability for the period January 1, 2015, through April 30, 2020.

The Bureau added penalty and interest to the use tax deficiency. The Commission reviewed those additions, found both to be appropriate 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 adjusted Notice of Deficiency Determination dated May 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>
\$14,089	\$704	\$1,003	\$15,796

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.
