

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 2-076-132-352
,)	
)	
Petitioner.)	DECISION
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(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 sales and use tax, penalty, and interest for the audit period January 1, 2019, through September 30, 2021, in the amount of \$32,787. The Commission hereby amends the Notice for the reasons detailed below.

Background and Audit Findings

Petitioner is a retail located in , Idaho. Petitioner began operations in January 2019. They sell along with their

. Petitioner’s sales consist of retail sales to customers, Electronic Benefit Transfer (EBT) sales, non-taxable sales to food vendors, and out of state shipments. The Bureau contacted Petitioner August 25, 2021, to discuss conducting a sales and use tax audit of the business, 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, supporting documentation for sales and use tax returns, and sales exemption certificates.

The Bureau reviewed all sales and purchases made during the review period for proper taxation. Most of the issues discovered in the audit were sales related. The Bureau discovered sales tax collected but not remitted to the state and a lack of supporting documentation for non-taxed sales. A lack of supporting documentation, showing Petitioner paid sales tax, was an issue with

purchases as well. The Bureau made multiple requests but was unable to obtain all necessary documentation from Petitioner. Therefore, the Bureau issued a Notice on August 31, 2022, based on the limited information provided.

Petitioner appealed the Notice, requesting a redetermination of six segments of non-taxable sales, and asking for an extension of time to provide additional documentation. The Bureau acknowledged Petitioner's protest and allowed them the additional time they requested. When Petitioner did not provide any additional documentation for consideration, the Bureau sent the case to the Tax Commission's Appeals Unit (Appeals) for administrative review.

On February 22, 2023, Appeals sent Petitioner a letter outlining the options for redetermining a protested Notice. Petitioner responded, requesting another extension of time to provide documentation as opposed to participating in an informal hearing.

On April 10, 2023, Petitioner provided a small number of sales tax exemption certificates for review. Appeals reviewed the exemption certificates provided and made changes to the workpapers for those customers with a valid exemption certificate, thereby reducing the tax due shown in the Notice. Petitioner provided no further documentation and all subsequent attempts to contact Petitioner have gone unanswered. Therefore, the Commission issues its decision based on the information presently available.

Relevant Tax Code and Analysis

In Idaho, an excise tax is imposed upon each retail sale, Idaho Code section 63-3619, unless an exemption applies.

Idaho Code Section 63-3622 Exemptions – Exemption Certificates and Resale Certificates details the requirements of a non-taxed sale or purchase.

63-3622. EXEMPTIONS — EXEMPTION CERTIFICATES AND
RESALE CERTIFICATES — PENALTIES. (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.

(b) An exemption certificate shall show the purchaser's name, business name, address, a federal employer identification number or driver's license number and state of issue, signature, date, and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed and dated by, and bear the name and address of, the purchaser or his agent, shall show the federal employer identification number or driver's license number and state of issue, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption certificate or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption certificate or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. The purchaser providing an exemption certificate or resale certificate to a seller shall bear all responsibility and liability for any subsequent audit of the transaction and the seller shall be held harmless. A seller need not accept an exemption certificate or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption certificate or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption certificate or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption certificate or resale certificate on file

with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption certificate or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

Petitioner's protest described six non-taxed items it wished reviewed for redetermination. The first item was the inclusion of EBT sales in the non-taxed sales review. Petitioner addressed this issue with the Bureau prior to the administrative review and the Bureau confirmed EBT sales were not included in the non-taxed sales they reviewed. The remaining five items all involved the lack of exemption certificates validating non-taxable status.

The code explains Idaho presumes all sales are subject to sales or use tax. The retailer is responsible for collecting sales tax unless the buyer provides an exemption certificate proving exempt status of the purchase. The certificate needs to be completed and signed by the buyer to shift the burden of tax from the retailer. The retailer can obtain a completed exemption certificate at any reasonable time to establish the exemption. In this case, Petitioner has had more than ample time to obtain exemption certificates from its customers for the remaining five non-taxed sales in question but has failed to do so.

Conclusion

Petitioner is a retailer, and as such, required to collect and remit Idaho sales tax unless provided with an exemption certificate by the buyer. Petitioner was able to provide additional exemption certificates during the administrative review, which warrants a modification to the Notice. The Commission finds the adjusted Notice to be a reasonably accurate representation of Petitioner's sales and use tax liability for the period January 1, 2019, through September 31, 2021.

The Bureau added penalty and interest to the sales and use tax deficiency. The Commission reviewed these additions and finds them appropriate per Idaho Code section 63-3045. 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 August 31, 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>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
	\$26,791	\$1,339	\$3,442	\$31,572

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.
