

Sales - The Bureau determined that Petitioner underreported its totals sales on the sales and use tax returns. Petitioner provided differing explanations of how the event center generates its revenue. Petitioner initially explained to Bureau that the only income derived from the business was beer sales. Petitioner later asserted that he received rental fees for the use of the event center, either from customers who used the facility for private events such as parties, or from promoters who sold tickets for admission to sponsored events.

Petitioner indicated he did not obtain written contracts for the rental of the facility, and did not secure Form ST-101, Sales Tax Resale or Exemption Certificate (ST-101) from any promoter. In the absence of a valid exemption, the Bureau held the gross income reported on Petitioner's income tax return as sales subject to tax.

Purchases - The Bureau held that Petitioner made purchases of fixed assets and supplies during the audit period that were not taxed at the time of purchase, nor had Petitioner remitted a use tax on these items. Petitioner has not disputed that these purchases were made, nor has he provided any evidence of the cost of these items. The actual value of these items could not be established based upon the documents provided by Petitioner; the amount held taxable by the Bureau is based upon deductions taken for supplies, other ordinary purchases, and depreciation expense on Petitioner's income tax return.

Petitioner's Protest

Petitioner's protest is brief, and is restated here in its entirety:

The **[Redacted]** respectfully protests the Final Audit Report on the following basis:

- 1.-The Audit was base (sic) only on an error made on the amount shown on the Income Tax reports.
- 2.-The report does not credit sales tax paid.
- 3.-The accountant will review the taxes and will provide accurate reports.
- 4.-Tax Period 01/01/12 to 12/31/14.

Petitioner further developed his protest during the informal hearing, stating the business held a very small number of events and he was unaware that state law requires specific business records be maintained and provided to the Commission upon request. Petitioner explained that most of his customers did not require a written contract for their use of the facility, and he was not aware of the requirement to obtain Form ST-101, Sales Tax Resale or Exemption Certificate (ST-101) from promoters who would rent the facility and sell tickets for admission. Petitioner contends the business records he provided to the Bureau during the audit, along with his amended income tax returns for the years within the audit period, indicate the lack of sales experienced by the business during the audit period.

Relevant Tax Code and Analysis

Petitioner's explanation of his business operations has been inconsistent. Petitioner initially claimed the only income derived from the business was beer sales. IDAPA 35.01.02.041.02 provides that sales tax is imposed on the amount paid for food, meals, or drinks furnished by a club or any other place or organization. Therefore, any sales of beer would be taxable.

Petitioner later claimed he received rental fees for the use of the event center. In Idaho, the sale of tangible personal property is subject to tax unless an exemption applies. Idaho Code § 63-3619. Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho.

IDAPA 35.01.02.030 states the following:

01. Admissions. Charges for admission to a place or event in Idaho are taxable. When a person or organization acquires the sole right to use any place or the right to dispose of or control the admissions to any place with the intent to charge people to attend the event. Such a transaction constitutes a rental for resale.
 - b. When a person or organization acquires the sole right to use any place or the right to dispose of or control the admissions to any place with the intent to charge people to attend the event, the amount paid for such right is not subject to sales tax. Such a transaction

constitutes a rental for resale. However, when the person or organization sells admission, the tax will apply to the amounts paid for such admission. If the person or organization does not charge people to attend the event, their rental of the recreational facility may be subject to sales tax. See Rule 129 of these rules.

Finally, IDAPA 35.01.02.129 provides that charges or fees to procure the use of a particular facility or building for the purpose of recreation are subject to sales tax.

The rental of the event center is a transaction subject to sales tax unless a valid exemption applies. The only possible exemption available to Petitioner would be for promoters renting the facility from Petitioner and charging admission to promoted events. Petitioner did not obtain an ST-101 from any promoter; therefore, none of these transactions qualify for the exemption.

Petitioner contends errors were made on his income tax returns, resulting in an overstatement of his income for the years included in the audit period. A tax preparer did submit amended, unsigned income tax returns to the Commission on behalf of Petitioner after the Bureau completed its audit. These returns indicated reductions in total income for Petitioner of \$820 in calendar year 2012, \$965 in calendar year 2013, and \$1,204 in calendar year 2014, but did not attribute these decreases specifically to the Schedule C filed for the event center.

After the informal hearing, Petitioner provided the Commission with copies of his bank account statements for the period covered by audit. **[Redacted]**, Petitioner, and his wife, **[Redacted]** are listed as the account owners; the event center is not named on the statements. None of the deposits or payments documented on the bank statements correspond with the profit and loss spreadsheet provided by Petitioner during the audit, and most are personal in nature. There is no evidence the account was utilized for the event center.

The Commission reviewed the income tax returns filed by Petitioner, and found the values subject to sales and use tax assessed by the Bureau to be appropriate. Idaho Code § 63-3624 provides every seller and retailer in Idaho shall keep records, receipts, invoices and other pertinent

papers for a period of not less than four years, and provide these documents to the Commission upon request. In this case, Petitioner either did not maintain required business records, did not provide such records to the Commission, or both. The limited business records provided by Petitioner are insufficient to modify the Notice.

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.” *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 Commission will uphold the Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s sales and use tax liability for the period January 1, 2012, through December 31, 2014.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through August 31, 2017, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated December 2, 2015, 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>
\$14,335	\$637	\$1,686	<u>\$16,658</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this _____ day of _____, 2017.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2017 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:

[Redacted]

Receipt No.
