

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 20962
[Redacted],	)	
	)	DECISION
Petitioner.	)	
	)	
	)	
	)	

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On December 14, 2007, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing sales and use tax, and interest for the period of July 1, 2003, through June 30, 2006, in the total amount of \$23,520.

On February 13, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on May 15, 2008.

The taxpayer sells [Redacted]. At issue is the imposition of sales tax on model home credits. These credits were manufacturer's rebates offered on sales of certain [Redacted]. The taxpayer sold the [Redacted] at a discount and was in turn reimbursed by the manufacturer, the [Redacted].

Idaho Code § 63-3613 states, in relevant part:

**63-3613. Sales price.** (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the

regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

2. The cost of materials used, labor or service cost, losses, or any other expense.

3. The cost of transportation of the property prior to its sale.

4. *The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.*

(b) The term "sales price" does not include any of the following:

...

8. *Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer...*[Emphasis added.]

Thus, rebates that are applied to the purchase price of a [Redacted] are excluded from the price subject to tax. Other rebates are not. Furthermore, Idaho sales tax rule 051 states, in relevant part:

**01. Adjustments That Apply After Tax Calculation.** Tax must be charged before deducting the following: (2-18-02)

**a.** Cash discounts. Sales tax must be computed on the full amount of the purchase price before the cash discount is subtracted. When an invoice or other billing document states that a discount will be allowed if payment is made before a certain date, then the discount is presumed to be a cash discount. Discounts allowed on payments received after the stated date are presumed to be cash discounts unless proven to the contrary by clear and convincing evidence.

(7-1-93)

**b.** Manufacturer's rebates. Except as provided by Subsection 051.02 of this rule, sales tax must be computed on the full amount of the purchase price without regard to the manufacturer's rebate. Any rebate received by the purchaser from the manufacturer, distributor, or any person other than the retailer will not reduce the retail sales price subject to tax. *Rebates paid by a retailer to the consumer will also be included in the price subject to sales tax if the retailer has been reimbursed by a third party, such as the manufacturer.*

(2-18-02)

c. Manufacturer's discount coupons. Sales tax must be computed on the full amount of the purchase price before subtracting the coupon amount. This includes coupons issued by a manufacturer allowing the purchaser to buy one item and get a second item free if the retailer will be reimbursed by the manufacturer. (7-1-98)

**02. Adjustments That Apply Before Tax Calculation.** Tax is charged after the deduction of the following: (2-18-02)

a. Trade discounts. A trade discount is a reduction from the posted or listed price offered by a retailer which is not an inducement for prompt payment and which, when applied to the posted or listed price, establishes the true selling price to be paid by the purchaser. (7-1-93)

b. Retailer's rebates. A retailer's rebate is an amount of money or property paid by a retailer to a purchaser which is conditioned upon the recipient making a purchase from the retailer. However, if a retailer is reimbursed by a manufacturer or other third party, the transaction is not a retailer's rebate and the rebate amount is included in the sales price subject to sales tax. This would be the case when a purchaser sends the rebate claim to the retailer, the retailer sends the rebate amount to the purchaser and the manufacturer reimburses the retailer. (2-18-02)

c. Retailer discount coupons. Retailer discount coupons are coupons issued by a retailer which entitle the holder to purchase the issuing retailer's products at less than the posted or listed retail price.(7-1-93)

d. Manufacturer's motor vehicle rebates. Effective July 1, 1990, a manufacturer's rebate offered to a purchaser of a motor vehicle may be deducted from the purchase price of the vehicle before computing the tax IF the rebate is used to reduce the retail sales price of the vehicle, or is used as a down payment on the purchase. The dealer's customer invoice must show the manufacturer rebate as a deduction to, or down payment on, the purchase price of the vehicle. Only manufacturer rebates offered on motor vehicles qualify for the exclusion from tax. *Manufacturer rebates offered on trailers, off-highway equipment, and other property will be treated as discussed in Subsection 051.01.b. of this rule.* [Emphasis added.] (7-1-96)

...

Subsection 35.01.02.051.01.b. describes rebates that are identical to the [Redacted] rebates in question. The rebates, therefore, do not reduce the price subject to tax.

Legal scholars have noted that manufacturers' rebates are generally held to be part of the price subject to tax. [Redacted] stated, in an article titled *Discount Cards and Promotional Funds: When Is A Third-Party Payment Part Of The Taxable Sales Price?* “[g]enerally speaking, states that include manufacturers' coupons in the taxable 'sales price' of goods treat rebates similarly.” [Redacted] also added that the “taxability of rebates and discounts is thus best viewed as the administrative default position subject to express legislative guidance to the contrary.” *15-SEP J. Multistate Tax'n 08, 2005*. Hellerstein and Hellerstein also note that taxation of manufacturers' rebates is the rule rather than the exception. *Jerome R. Hellerstein & Walter Hellerstein, State Taxation* § 17.06(3), (3<sup>rd</sup> ed. 2007). Thus, Idaho's statute conforms to those in most states.

Furthermore, in a case involving a rebate of \$500 applied to the purchase price of a motor vehicle, the Missouri Supreme Court held that the rebate was part of the price subject to tax:

In this case, it is uncontested that the total amount paid to the dealer was \$14,050—a \$13,550 cash payment by the Ortvals and an additional \$500 by way of the assignment of the rebate or manufacturer's incentive allowance by the Ortvals to the dealer. By signing the application for title, the Ortvals certified that \$14,050 was the “agreed upon” purchase price of the automobile. The fact that part of the purchase price is paid through the medium of a rebate or manufacturer's incentive allowance, as opposed to cash, is legally irrelevant. The inclusion of the phrase, “regardless of the medium of payment therefor,” in § 144.070.2's definition of “purchase price” encompasses any form of payment used to satisfy the contract price. *Ortbals correctly states that a rebate from a manufacturer paid to a purchaser reduces the purchaser's net cost, but that rebate does not reduce the purchase price between the purchaser and the dealer. We hold, therefore, that the \$500 assignment was not a reduction in the purchase price.* [Emphasis added.] *Ortbals v. Director of Revenue*, 871 S.W.2d 435 (1993).

The taxpayer argues strenuously that the rebates are not cash discounts given to induce prompt payment. The Commission agrees that they are not cash discounts, but are manufacturer's rebates.

The taxpayer also provided a letter from [Redacted] manager of state and local taxation. The taxpayer's accountant urged the Commission to rely upon this as an independent, third-party verification similar to the third party confirmations required for financial audits. The Statements on Auditing Standards (SAS), published by the American Institute of Certified Public Accountants, require confirmation from third parties of certain items affecting the financial statements. See § AU 330 of SAS 67. These are confirmations of factual issues such as account balances. They are necessary to verify the accuracy of a business's records. The letter from the manufacturer does not serve as a third-party verification of a fact. It expresses a legal opinion.

Moreover, the reasoning of the opinion is incorrect. The letter states that the credits are not manufacturer's rebates because [Redacted] is not reimbursed by either a manufacturer or a third party. Rule 051 states that "[r]ebates paid by a retailer to the consumer will also be included in the price subject to sales tax if *the retailer* has been reimbursed by a third party, such as the manufacturer." [Emphasis added.] In this case, the taxpayer is the retailer and is reimbursed by [Redacted], who is the manufacturer.

Some adjustments are being made to the deficiency because the auditor imposed use tax on certain display items. The taxpayer has shown that these items actually were sold and tax was collected and remitted at the time of sale. The Commission will delete them.

Finally, the Commission feels that a negligence penalty is inappropriate in this case.

WHEREFORE, the Notice of Deficiency Determination dated December 14, 2007, is MODIFIED and, as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$17,575	\$3,915	\$21,490

Interest is calculated through September 3, 2008, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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.  
  
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