

**EFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 21859
[Redacted]	)	
Petitioner.	)	DECISION
	)	
_____	)	

On February 6, 2009, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination to [Redacted] (taxpayer) allowing a refund of sales and use tax and interest for the period of January 1, 2004 through November 30, 2006, in the amount of \$347.79 but denying the balance of the taxpayer's refund claim of \$216,648.

On March 31, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on December 3, 2009.

[Redacted].

The bad debt statute, Idaho Code § 63-3613(d) states:

(d) Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.

Retailers or their successors are therefore allowed to claim a refund of a portion of the tax they have remitted after a person who borrowed money to make a taxable purchase defaults on the loan.

The taxpayer filed a Form TCR refund claim on December 30, 2007. The taxpayer did not provide any additional documentation with the form. Most importantly, the taxpayer did not describe the tangible personal property to which the claim related, as required by IDAPA 35.01.02.117. Since the amount of the bad debt credit could not be calculated from the

information that the taxpayer provided, the audit staff requested that the taxpayer send more documentation on both the amount of tax paid on the original purchase of [Redacted] as well as the amount of loan payments the borrowers paid prior to defaulting. The taxpayer did not send this information until January 2009. The audit staff treated this later date as the date that the claim was filed.

Idaho Code § 63-3626 is the statutory provision governing sales and use tax refund claims. The statute states, in relevant part:

**63-3626. Refunds, limitations, interest.** (a) Subject to the provisions of subsection (b) of this section, if any amount due under this chapter has been overpaid, the excess amount may be credited on any amount then due to the state tax commission from the person by whom the excess was paid and any balance refunded to that person.

(b) (1) *No such credit or refund shall be allowed after three (3) years from the time the payment was made to the state tax commission, unless before the expiration of such period a written claim therefor is filed with the state tax commission by the claimant or the claimant's representative....* (Emphasis added.)

Because the audit staff considered the claim to have been filed in January 2009, they treated most of the bad debt claims as barred by Idaho Code § 63-3626(b)(1). If the audit staff had treated the claim as if it had been filed on December 30, 2007, the amount of the refund allowed would have been \$13,566.48. Although most of the defaults occurred within three years of December 30, 2007, many of the bad debt claims were still outside the limitation period because the vehicles had been purchased, and hence the tax had been paid to the Commission, more than three years prior to the refund claim.

The taxpayer has raised two arguments. The first argument is that the claim was actually filed in December 2007. The Commission does not dispute that the original Form TCR was filed on December 30, 2007. Idaho Code § 63-3626(b)(1) indirectly states that filing a written claim with the Commission stops the running of the three-year limitation period. The audit staff took

the position that the claim was not perfected because of the lack of documentation provided with the refund claim. There is nothing in the statute or in the administrative rules, however, that defines a perfected refund claim. Without some sort of authority, either in the statute or the rules, the Commission must treat the taxpayer's claim as filed on December 30, 2007, at which point the three-year limitation period stopped running.

Second, the taxpayer argues that the words "[n]o such credit or refund shall be allowed after three (3) years from the time the payment was made to the state tax commission..." do not apply to the bad debt credit allowed by Idaho Code § 63-3613.

The Commission has always treated refund claims as being governed by Idaho Code § 63-3626, including claims for bad debt refunds. The use of the word "refunded" in Idaho Code § 63-3613(d) indicates that bad debt claims should be treated like other refunds. There is no other limitation period in the Idaho Sales Tax Act that applies to refunds or to bad debt claims. For this reason, the amount that should have been refunded is \$13,566.48. The Notice of Taxpayer Initiated Refund Determination must, therefore, be modified to reflect this amount.

WHEREFORE, the Notice of Taxpayer Initiated Refund Determination dated February 6, 2009, is MODIFIED and, as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$13,278	\$3,031	\$16,309

Interest is calculated through February 28, 2010.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, 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.

COPY MAILED TO:

[Redacted]

[Redacted]

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