

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 22678  
Petitioner. )  
DECISION  
\_\_\_\_\_ )

On January 8, 2010, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted], Owners dba [Redacted] (taxpayer) proposing sales tax, use tax, and interest for the period September 1, 2006, through August 31, 2009, in the total amount of \$68,635.

On March 4, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission sent a hearing rights letter to the taxpayer and its representative on March 26, 2010, and a follow-up letter on February 8, 2011. At the request of the taxpayer, the Commission held an informal hearing on April 24, 2011. The Commission, having reviewed the audit file and the information provided at the hearing, hereby upholds the findings.

Background

During the period under audit, the taxpayer was a used vehicle dealer. The resale inventory consisted of salvaged or damaged vehicles that the taxpayer first repaired and then sold. The taxpayer was an Idaho-registered vendor for sales tax purposes during the audit period and filed sales tax returns regularly.

In a review of the sales invoices and related records, the auditor noted that the taxpayer listed the vehicle sales price separately from the charge of labor expended to return the vehicles

to salable conditions. The sales price subject to tax, however, did not include those labor charges. The auditor held the aggregate amount of the labor charges as taxable.

Additionally, the auditor found some purchases subject to use tax. A use tax is due when a buyer makes a taxable purchase and did not, or could not, pay sales tax to the vendor. The use tax rate is the same as the sales tax rate (Idaho Code § 63-3621).

#### Relevant Idaho Sales Tax Statutes

In Idaho, the sale of tangible personal property is taxable (Idaho Code § 63-3612(1)). Motor vehicles are tangible personal property, and sales of vehicles are taxable unless an exemption applies. The sales price subject to tax is defined in relevant part as follows:

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...
2. The cost of materials used, labor or service cost, losses, or any other expense (Idaho Code § 63-3613).

Therefore, when property owned by a retailer is restored and then sold, the amount subject to tax is the price charged by the retailer with no deduction allowed for any labor costs included to bring the goods to a marketable condition. The separate statement of the labor cannot be used to lower the price subject to tax.

In contrast to the preceding, a person who owns a vehicle in need of repair will pay tax to a mechanic on the purchase of the parts acquired and installed but not on the repair labor:

In General. Repairs normally require both material and labor. Persons engaged in the business of **repairing**, renovating or altering **tangible personal property owned by others** are required to collect sales tax upon the parts or material required in the repair or renovation of the property (IDAPA 35.01.02.062.01. Emphasis added).

### Taxpayer's Protest

In its protest, the taxpayer recalls receiving and following advice from two Commission field office employees; one an administrative staff person and the other an auditor. The taxpayer mentions assistance from the administrative staff person related to completing the periodic sales tax returns. Never, the taxpayer states, was information given stating that the labor charges referred to previously were subject to tax. In fact, according to the taxpayer, the two Commission employees gave information to the contrary. Further, the taxpayer believes that the purchaser is responsible for the unpaid tax and that the county assessor's office, where the purchased vehicles were registered, should have caught the tax errors.

The taxpayer did not raise any objection to the use tax liability.

### Analysis and Conclusion

The Commission agrees with the auditor's findings that the entire charges for the vehicles sold, which include the vehicle price, the added parts, and labor, are subject to tax in accordance with the statute and administrative rule cited previously.

The tax code places a burden on the seller to collect the tax, and while the legal incidence of the tax is intended to fall upon the buyer, this is not a substitute for the seller's requirements (Idaho Code § 63-3619(b) and IDAPA 35.01.02.068.07). Since the taxpayer is a retailer and collected tax, the county assessor's role was to register and title the vehicles. Whatever responsibilities and guidelines the assessor may have, there is no statutory basis for shifting the seller's responsibility for collecting the appropriate amount of tax to the assessor.

The extent of the assessor's responsibilities can be found in Sales Tax Administrative Rule 106 which states, in relevant part, as follows:

**Vehicles Purchased from Idaho Dealers.** When a dealer of new or used motor vehicles sells any motor vehicle for delivery in Idaho, he must collect sales or use tax at the rate in effect on the date the motor vehicle is delivered to the buyer, unless an exemption applies. He must also prepare a title application form and include the dealer's Idaho seller's permit number, gross sales price, trade-in allowance, net sales price, and total tax collected. **A title application form which is completed by the dealer and displays Idaho sales tax collected is evidence that the buyer paid sales tax to the dealer** (IDAPA 35.01.02.106.03, emphasis added).

The auditor of this case and other Commission staff involved in asserting a liability and upholding those findings were not a party to the conversations held between the taxpayer and Commission staff at the field office. Although the Commission has no reason to refute the statements of the taxpayer, the Commission is nevertheless unaware of precisely what was asked and how fully the taxpayer's circumstances were explained. Sales tax law, and tax law in general, is nuanced and those with limited knowledge who pose questions can inadvertently omit a seemingly unimportant fact which leads to an incorrect answer. There is no statutory basis for voiding or reducing an assessment because a taxpayer claims to have relied on erroneous information from the Commission.

A determination of the State Tax Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984), and the burden is on the taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986).

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the taxpayer's sales and use tax liability for the period September 1, 2006, through August 31, 2009.

The Bureau added interest to the sales tax deficiency. The Commission found it to be appropriate per Idaho Code § 63-3045 and has updated interest accordingly through September 30, 2011. Interest accrues until the tax liability is paid.

WHEREFORE, the Notice of Deficiency Determination dated January 8, 2010, is hereby APPROVED, in accordance with the provisions of this decision and, as so APPROVED, is 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>
\$60,940	\$ 11,972	\$ 72,912

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 enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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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