

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22762
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On January 15, 2010, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination (Notice) to [Redacted] (Taxpayer) denying, in part, a refund claim of \$36,020 in sales tax for taxable period September 1, 2005, through November 30, 2008, in the total amount of \$2,901.

In a letter dated March 18, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission sent the taxpayer two hearing rights letters, one on April 23, 2010, and another on May 24, 2010. The taxpayer did not reply to either letter. For the reasons that follow, the Commission hereby upholds the Bureau's findings.

BACKGROUND

The taxpayer requested refunds for sales tax remitted under its vehicle loan financing program for customers who later defaulted on their loans. The defaults culminated in vehicle repossessions, and the taxpayer claimed bad debt sales tax refunds allowed under Idaho Code § 63-3613(d) and Idaho Sales and Use Tax Administrative Rule 063 (IDAPA 35.01.02.063).

The auditor reviewed the payment history of each defaulted loan to determine how the taxpayer applied the loan payments to the principal. The auditor found that the taxpayer added repossession fees to the amount of the uncollected principal and requested a refund of tax based

on this total. Since repossession fees were never part of the uncollectible sales tax, the auditor removed these amounts from the request, thus reducing the refund.

The auditor also determined that the taxpayer added late fees to the amounts due and that subsequent loan payments were first applied to the late fees before being applied to principal reduction. For the purpose of calculating the amount of sales tax that resides in the unpaid debt, the auditor believed that the periodic payments should have been applied to the original loan balances first, thus reducing the unpaid sales tax amount. The auditor adjusted the payment application accordingly, which reduced the requested sales tax refund amounts further.

The auditor explained to the taxpayer that repossession and late fees are a cost of doing business and are unassociated with the sales tax calculated on the original sales transaction.

TAXPAYER'S PROTEST

The taxpayer stated that prior refund claims with the Commission were not reduced for repossession or late payment fees. The taxpayer questions why the Commission is using a new and detrimental way to calculate sales tax refunds.

The taxpayer cites from the previously mentioned bad debts and repossessions sales tax administrative rule:

If the collateral is repossessed and seasonably resold at public or private sale, then the seller is entitled to a bad debt adjustment. However, before calculating the amount of tax that may be credited or refunded, the taxpayer must reduce the amount claimed as worthless by the amount realized from the sale of the collateral (IDAPA 35.01.02. 063.03.c).

The taxpayer asserts that since the late fees and the repossession fees owed them reduce the "amount realized," this should increase the bad debt and thus the sales tax refund that is calculated from it.

ANALYSIS

Late charges and repossession fees were never part of the sales price subject to the tax that the taxpayer wishes to recover. As such, it is inappropriate to add these amounts to the unpaid principal upon which the sales tax refund is calculated. The previously referenced subsection of the bad debts and repossessions administrative rule extends logically from the premise that any payment to the taxpayer on customers' accounts includes tax due from the original sales transaction.

The amount of credit that can be claimed is the amount of sales tax that is uncollectible. ... credit may be taken only for that portion of the bad debt which represents unpaid sales tax (IDAPA 35.01.02.063.05. Excerpted in relevant part).

No payment required by the seller/financier (i.e. the taxpayer) at the time of the sale or after it, that was not subject to sales tax, can be of consequence to the refund the taxpayer seeks.

Regarding the taxpayer's assertion that its prior sales tax refund claims were not reduced by the auditors for the inclusion of repossession or late payment fees, the Commission finds no evidence to support the taxpayer. For other similar refund claims there is no evidence that the audit staff knowingly accepted the arguments now promoted by the taxpayer. This decision is consistent with the practice of the Commission's auditors, and if the taxpayer's assertion of a prior inconsistent result is accurate, it is nevertheless unlawful.

The taxpayer has not provided the Commission with information to establish that the amount denied in the Notice is incorrect. As a result, the Commission will uphold the denial Notice for the period September 1, 2005, through November 30, 2008. 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

determination is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986)).

WHEREFORE, the Notice of Taxpayer Initiated Refund Determination dated January 15, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this _____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

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.