

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23127
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On April 23, 2010, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayers) proposing sales tax, penalty, and interest for taxable period of July 1, 2006, through June 30, 2009, in the total amount of \$131,269.

On June 25, 2010, an attorney representing all of the taxpayers filed a timely appeal and petition for redetermination. The Commission held an informal hearing on November 9, 2010. For the reasons that follow, the Commission hereby modifies the findings.

Background and Audit Findings

According to the Bureau, the taxpayers operated as a wholesale and retail vendor of used motor vehicles. This family-run business ceased in February 2010 following the period under audit. The auditor asserted liability in three areas. He found untaxed sales that lacked evidence of an exemption claim. Additionally, he determined that there were unreported sales after noting that the aggregate of bank deposits over the audit period exceeded the sales total reported to the Commission. Finally, the auditor found a disparity between documented tax collected and the amount reported to the Commission. He held the unremitted amount as a liability.

### Relevant Tax Law

Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act. The sale of goods (i.e., tangible personal property) is included within this definition. Thus, the sale of motor vehicles is taxable unless an exemption applies. Relevant to this protest, there is an exemption for the sale of motor vehicles to a non-resident even though the buyer takes possession in this state. The sale must be documented properly in order for the seller not to charge tax (Idaho Code §§ 63-3622R(a) and 63-3622(a)). The exemption claim form for a non-resident purchasing a vehicle in this state is the ST-104MV (IDAPA 35.01.02.106.01.b.).

The Commission enforces the provisions of the Sales Tax Act and adopts rules relating to its administration. Every seller must keep records as the Commission requires. (Idaho Code § 63-3624 (a) and (c)).

These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account, together with all schedules or working papers used in connection with the preparation of tax returns (IDAPA 35.01.02.111.01.b.)

### Taxpayers’ Protest

The taxpayers argue that only one of them, [Redacted], is in fact the owner of the business and that the others named in the Notice and this decision are employees and cannot be liable for the adverse audit findings. The taxpayers’ representative provided a copy of the automobile dealer’s license in [Redacted] name as evidence.

Additionally, the taxpayers object to being held for tax on sales for which the auditor found no exemption certificates. The protest letter cites the following in the taxpayers' defense:

...it shall be presumed that all sales are subject to the taxes ... and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, *or* has on file with the retailer, an exemption or resale certificate (Idaho Code § 63-3622(a), emphasis added by the taxpayer).

The taxpayers state that the highlighted conjunction, above, indicates that there are alternative methods of establishing exemptions. The taxpayers then cite another subsection of the same statute:

The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale (Idaho Code § 63-3622(f)).

The taxpayer then cites from a Commission decision:

In considering the interpretation of Idaho Code § 63-3622, the Commission must consider the language of the statute by giving effect to every section and construing each section so that it is harmonized with the other section of the statute. When considering these factors, it is clear that the legislature intended a low threshold for the acceptance of certificates by sellers.... The seller can rely on the representations of the buyer, even if the representations are not reasonable and the seller has no duty to question or challenge the representations. The seller can only be held liable if the seller's actual knowledge is such that he knows the buyer cannot claim the exemption at the time of sale or if the purchase is taxable as a matter of law (Decision 21727, 2009, p. 4).

In conclusion to this contested issue, the taxpayers state that independent verification can be obtained from the Department of Motor Vehicles (DMV), for \$7 per vehicle, to determine if the customers in question actually lived out-of-state or registered the vehicles in Idaho. Alternatively, a sample of the contested sales could be researched to achieve credible results.

In a separate issue, the taxpayers object to the auditor holding bank deposits in excess of booked sales as unreported taxable sales. The taxpayers note that while the bank deposits may increase gross income, it is erroneous to conclude that the increase translates to unreported sales.

The presumption of taxability requires a sale. Car sales create a large paper trail. If there is no documentation to support unreported sales, the taxpayers state, it cannot be inferred that there are unreported sales. The taxpayers suggest that, for \$500, a list of the vehicles sold by the taxpayers can be obtained from the DMV to settle this difference of opinion. It is not fair, in the taxpayers' opinion, for them alone to bear the financial burden of the research.

The taxpayers conclude their defense of this issue with a discussion of how they financed the purchase of the cars they resold. They mention nontaxable loan proceeds, inter-company deposits, and transfers between two bank accounts. Further, they mention "flooring," describing it as a costly method of borrowing funds. The taxpayers state that the auditor mistakenly views these transactions and deposits as unreported income.

Finally, the taxpayers object to the liability shown on an audit workpaper that compares the tax collected to the tax remitted, holding the variance between these two figures taxable. They state that they cannot understand how a figure referred to as a "base amount" was determined and how an unremitted tax variance was determined from that amount.

#### Analysis and Conclusion

Issue - The ownership of the business under audit is disputed: The auditor doesn't contest that [Redacted] has an automobile dealer's license. However, this is not sufficient evidence to conclude that no one else can be an owner. The auditor found that [Redacted] were listed in the Idaho Secretary of State's database as doing business in the assumed name in the most recent registration document dated 2005. Further, [Redacted] reports the business in his individual income tax returns. Finally, the auditor found that the business has no withholding number and is, therefore, not reporting compensation for two other family members named in this decision and claimed by the taxpayer to be working for the business. It is a reasonable

conclusion that these family members are part-owners who were uncompensated during the audit period.

Issue - Sufficiency of documentation for untaxed sales is disputed: The Commission does not dispute that the legislature intended a low threshold for the acceptance of certificates by sellers. As noted earlier, citing Idaho Code § 63-3622(a), all sales are presumed taxable, and the retailer has the burden of establishing the facts giving rise to an exemption, providing that an exemption certificate on file with the retailer relieves the retailer of collecting tax.

There were no ST-104MVs on file for any of the sales transactions the auditor held as taxable. The Commission disputes the characterization the taxpayers place on the conjunctive “or” in Idaho Code § 63-3622(a). Nevertheless, and presuming for the sake of argument that the tax code allows for methods other than the presence of an exemption certificate to substantiate a tax-exempt sale, the Commission turns to what might be viewed as sufficient evidence. First, without a certificate, there is no evidence that any of the buyers in the contested sales asked for an exemption. While the assembled documents for an automobile purchase have signatures, there is no indication that any of those signatures attested to a claim for an exemption. While the presence of an Oregon address on the purchase papers, for example, is an indication that a buyer has some connection with Oregon, it is not evidence that the buyer in Idaho is not an Idaho resident as well. At a minimum, the Commission believes that a buyer must make an exemption claim and attest to the claim by signing it. The attestation need not be on an ST-104MV, but it must be in evidence. Rationale for that belief is found in this statute:

... The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. *Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally*

*requires* on sales invoices, purchase orders, or other sales documentation (Idaho Code § 63-3622(f)). [Emphasis added.]

The Commission concludes that the taxpayers did not fulfill the requirements for documenting exemptions.

The taxpayers believe that an examination of DMV records would show that vehicles they sold exempt from tax were never registered in Idaho, thus satisfying their claim that the buyers were legitimately, qualifying non-residents. The Commission does not agree. As noted above, a buyer could have more than one residence; one in a non-taxing state such as Oregon, and another in Idaho. An automobile purchased in Idaho would not qualify for an exemption under these circumstances. A signed claim by the buyer stating that he or she is not an Idaho resident is the required evidence in this case, and it does not exist. Further, it is the responsibility of the taxpayer to maintain adequate records for exemptions and not the burden of the Commission to seek third party corroboration in their absence.

Issue - Dispute that the aggregate of bank deposits in excess of reported sales consists of untaxed and unreported sales: Some of the liability associated with this issue has been resolved by documentation recently provided by the taxpayers showing that loan amounts and bank account transfers account for some of the disparity. Adjustments have been made accordingly, and the loan amounts were extrapolated to parts of the audit period for which no documentation was available to lower that liability as well. However, not all of the discrepancy has been accounted for, and liability remains.

The Commission maintains that fulfilling the recordkeeping requirement of Idaho Code § 63-3624 would answer the auditor's question as to whether a bank deposit was the result of an unrecorded sale. In the absence of complete records, the auditor can rightly presume that these deposits are unreported sales, and the burden is on the taxpayers to prove otherwise.

Records purchased from the Idaho Department of Transportation would not be sufficient proof of total sales and, as noted previously, the Commission is under no obligation to undertake such a record search.

Issue - Dispute over the reconciliation of tax collected to tax remitted: From the taxpayers' records, the auditor compared the amount of sales tax accumulated in each reporting period with the amounts remitted to the Commission for the same periods. Where the amount collected exceeded the amount remitted, the auditor divided the difference by the tax rate to express the liability as a taxable amount. He referred to this taxable amount in his workpapers as the "base amount," and it was carried forward to the exhibit of liability. The Commission sees no fault with the finding or ambiguity with respect to its meaning.

WHEREFORE, the Notice of Deficiency Determination dated April 23, 2010, is MODIFIED, and as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
33,147	1,657	6,951	\$41,755

The Bureau's imposition of interest and penalty are appropriate per Idaho Code §§ 63-3045(6) and 63-3046(c) and (g). Interest is accrued through July 31, 2011. It continues to accrue until the tax liability is paid.

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

An explanation of the taxpayers' 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.