

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23370
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On July 29, 2010, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination Refund Denial (NODD) to [Redacted] (taxpayer) proposing sales and use tax and interest for the period of July 2010 denying a refund claim in the amount of \$2,986.08. The taxpayer is married to [Redacted]. Although the NODD was issued only to [Redacted], both spouses will, henceforth, be referred to as the taxpayers.

On September 8, 2010, the taxpayers filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayers on November 1, 2010.

At issue is the imposition of sales tax by the seller on the purchase of a new 2010 Dodge Ram pickup.

The taxpayers own a motor vehicle dealership in [Redacted]. [REDACTED] is licensed by the Idaho Transportation Department as a seller of used vehicles only. On April 25, 2010, the taxpayer purchased a new pickup from [Redacted] in [Redacted]. The taxpayer wanted to purchase the vehicle for resale and offered to give [Redacted] a signed Form ST-101 resale certificate. Because the taxpayers are not licensed to sell new Dodge vehicles, [Redacted] refused to accept the ST-101 and collected sales tax on the sales price of the vehicle. The taxpayers then filed a refund claim for the amount of the tax they paid to [Redacted].

The taxpayers argue that they have not registered the pickup and are holding it for resale only. When the taxpayers drive the vehicle, they use a dealer license plate. Purchases for resale are not included in the definition of “retail sale” found in Idaho Code § 63-3609. Since Idaho Code § 63-3619 only imposes tax on retail sales, purchases for resale are not taxable. The issue, therefore, is whether the taxpayers purchased the vehicle for their own consumption.

Idaho Sales Tax Rule 108.02.b. (IDAPA 35.01.02.108.02.b.) states that Idaho dealers may title motor vehicles held for resale in their dealer name to ensure clear title to the vehicle. The Commission notes that the vehicle was titled only in the name of the individual taxpayer, which creates the presumption that the taxpayers purchased the vehicle for their own use.

There is some confusion as to the organization of the taxpayers’ business. The taxpayers state that they are operating as a sole proprietorship; however, according to the Secretary of State’s office, [Redacted] is registered as a Limited Liability Company. The taxpayers filed an annual report with the Secretary of State on March 11, 2010, and, as of December 9, 2010, are still listed as an existing LLC. For this reason, the Commission finds that [Redacted] is a separate entity from the individual owners of the business.

The Commission notes further that the taxpayer could not sell the vehicle as new. It does not seem possible for a dealer to buy a new vehicle and sell it at a later date as a used vehicle with the expectation of earning a profit. The taxpayer argues that it is possible to sell a diesel pickup at a profit one or two years after its purchase; however, it is unlikely that a reasonably prudent business person would hold a vehicle in inventory for such a long time.

The taxpayers argued further that they traded in two vehicles when they purchased the pickup. Idaho Code § 63-3613(b)(2) excludes from the price subject to tax “any sums allowed on merchandise accepted in payment of other merchandise.” This provision is commonly known

as the “trade-in credit.” The taxpayers provided a copy of a note signed by the sales manager of [Redacted] that stated [Redacted] would pay the taxpayers \$45,000 for the two vehicles. Since the taxpayers were paid in cash for the two vehicles, they were not accepted as payment for the new vehicle and, therefore, would not reduce the price subject to tax.

For the reasons stated above, the Commission finds that the taxpayers purchased the Dodge pickup for their own consumption and not for resale.

WHEREFORE, the Notice of Deficiency Determination Refund Denial dated July 29, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

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

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

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
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.  
  
\_\_\_\_\_