

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24510
[Redacted],,)	
)	
Petitioner.)	DECISION
_____)	

On July 29, 2011, 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] (taxpayer). The Notice asserted additional sales tax, use tax, penalty, and interest in the total amount of \$1,208 for taxable periods from May 1, 2008 through December 31, 2010. The taxpayer filed a timely appeal and petition for redetermination on September 9, 2011, and requested a hearing which was held on March 7, 2013.

The Commission, having reviewed the audit file and considered the additional information and documentation provided by the taxpayer, modifies the audit findings for the reasons detailed below.

The taxpayer is a retailer of [Redacted] products with several retail locations in various states including Idaho, [Redacted]. Like many retailers with multiple locations, the taxpayer has a return policy that allows customers to purchase merchandise at one of its stores and return that merchandise to any of its stores regardless of the location of the original sale.

The Bureau undertook a routine audit of the taxpayer's records to review compliance with applicable sales and use tax laws. The Bureau found that the taxpayer had made some sales at its Idaho location which the customer subsequently returned to one of the taxpayer's locations in [Redacted]. For those sales, the taxpayer correctly collected Idaho sales tax at the proper rate (6%) on the initial sale; however, at the time of the return, the taxpayer refunded tax to the

customer at the tax rate applicable to the [Redacted] location (ranging from 7.8% to 8.7% depending on location). On the receipt given to the customer at the time of the return, the tax was labeled as [Redacted] sales tax. In preparing the Idaho sales tax returns, the taxpayer included both the tax collected on the original sale and the higher tax refunded on the coinciding return of the product. Neither event was reflected on the [Redacted] sales tax returns.

To illustrate this point, a simple hypothetical example seems helpful. A customer purchases a phone at the taxpayer's [Redacted], Idaho location in May 2008. The phone costs \$100 and the taxpayer charges the customer \$6 Idaho sales tax. The \$6 tax is paid over to the state of Idaho on the taxpayer's May 2008 sales tax return. In June 2008, the customer returns the phone to the taxpayer's [Redacted], [Redacted] location and receives a refund of \$100 for the product and \$7.80 of tax (the proper tax rate in that location at that time). When preparing the June 2008 Idaho sales tax return, the taxpayer reduces the sales tax paid to the state of Idaho by \$7.80. The taxpayer does not report any of these events on the [Redacted] sales tax returns.

In reviewing these types of transactions, the Bureau disallowed the entire adjustment for the customer refund because the tax refunded was not Idaho sales tax. The Bureau asserted other errors resulting in additional liability on the Notice, but they are irrelevant to this discussion, as the taxpayer has not disagreed with any of the other audit findings.

The taxpayer protested the Bureau's imposition of tax, arguing that they should not be held accountable for the limitations of their sales software, which restricted transactions at a particular store to a single tax rate. The taxpayer emphasized that the entirety of the transaction, including both the sale and the return, were included on the Idaho sales tax returns only. Though the customer received more tax back than originally paid, the taxpayer argues that all facts make it clear the refund was intended as Idaho sales tax.

In considering this case, the Commission finds no code or rule that addresses the specific situation. The Commission agrees with the Bureau that only adjustments related to Idaho sales tax can be taken on an Idaho sales tax return. However, the Commission remains unconvinced that the taxpayer in these transactions has refunded Washington tax rather than Idaho tax. The sale and return must be viewed as components of a single transaction. There is no dispute that it is Idaho sales tax collected on the initial sale. When the customer returns the product, that initial sale would be reviewed by the store. It seems unreasonable to assert that the store would review that transaction, correctly refund the sales price of the product, and then intentionally refund a different tax than originally paid by the customer. The Commission finds the taxpayer's claim more plausible, especially given the taxpayer's treatment of the tax in reporting it solely as an Idaho sales tax.

The Commission assumes that the Bureau came to the conclusion it did based, at least in part, on possible harm to Idaho's tax revenue stream. However, if one of the taxpayer's customers claimed a refund of Idaho sales tax on the basis that they had not received a proper refund of the tax at the time of the return, the Commission believes its own refund procedures would prevent any such harm. Per IDAPA 35.01.02.117.02, a customer seeking a refund of sales tax must request a refund from the vendor first and if the vendor refuses the request, evidence of this refusal must be submitted to the Commission along with any refund claim. These claims are reviewed by the Bureau that performed this audit. In reviewing the claim and consulting with the parties involved in the transaction, it would be obvious from the documentation that tax had been refunded. If the identity of the tax refunded were called into question, the vendor could prepare a revised receipt for the customer's records, correctly identifying the tax refunded.

Given the procedures in place, the Commission cannot conceive of a scenario in which an additional refund of Idaho sales tax would be issued.

In conclusion, the Commission finds it reasonable to allow the taxpayer to take a credit for the tax refunded to its customers up to the amount of the Idaho sales tax originally charged. Since the tax refunded beyond that amount was never remitted to the state of Idaho, it is not the responsibility of the Commission to remedy.

Finally, the Commission approves of the Bureau's imposition of interest as appropriate per Idaho Code § 63-3045(6).

THEREFORE, the Notice dated July 29, 2011, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$626	\$0	\$114	\$740

Interest is calculated through March 7, 2014, and will continue to accrue until the entire liability has been paid.

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 _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
