

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26128
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On December 12, 2013, 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] (taxpayer) proposing sales tax, use tax, penalty, and interest for the period December 1, 2009, through December 31, 2012, in the total amount of \$37,693.

On December 30, 2013, the taxpayer filed a timely appeal and petition for redetermination of the Notice. At the taxpayer’s request, the Commission held an informal hearing on June 17, 2014. Present at the hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Policy Specialist [Redacted].

The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing and thereafter, and hereby issues its decision upholding the audit findings.

Background and Audit Findings

[Redacted] is a [Redacted] that offers in-house financing. At issue in this decision are unsecured in-house financing transactions and the method by which the taxpayer accounted for sales tax charged to customers on those sales when those customers’ accounts were later deemed worthless.

As a retailer, the taxpayer filed periodic sales tax returns with the Commission which reported sales activity and included remittances for taxable sales. Within the audit period, the taxpayer took credit for sales tax related to bad debt, a practice allowed under the Idaho Sales and Use Tax Act. In general, the amount of sales tax credit available is based on the unpaid principal amount that exists at the time of default. For reasons not relevant to this decision, the monthly sales tax credits were allowed and processed.

The Bureau subsequently conducted a limited scope audit examining only the credits taken for sales tax related to bad debt and determined that much of the credit should not have been allowed. The Bureau issued a Notice to recover the amount it deemed in excess of what was refundable.

The taxpayer protested the Notice on the basis that because the monthly sales tax credits were allowed and processed, he was led to believe that he was calculating these credits properly and, therefore, should not be held liable for any errors related to the credits taken.

Relevant Tax Code

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies (Idaho Code § 63-3612). Retailers must collect the tax from their customers and the tax must be computed on the sales price at the time of the sale for all credit, installment, or similar conditional sales (Idaho Code § 63-3619).

In general, sales tax is due and payable to the Commission on a monthly basis by the twentieth day of the sales' succeeding month (Idaho Code § 63-3623). The taxpayer, in this case, was a monthly filer.

For credit sales, tax is due to the Commission prior to full collection by the retailer from its customers, even though the amount financed includes sales tax:

- (a) The tax shall apply to, be computed on, and collected for all credit, installment, conditional or similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged.
- (b) The tax hereby imposed shall be collected by the retailer from the consumer (Idaho Code § 63-3619).

This practice is confirmed in an administrative rule which states that “tax is owed to the state at the time of sale, regardless of when the payment is made by the customer” (IDAPA 35.01.02.063.01).

However, the tax code has a provision for a retailer to recover taxes it paid on credit sales accounts which are later found to be worthless. The retailer may take a credit against subsequent payments of sales tax (i.e. future sales tax returns) to the Commission.

Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter....(Idaho Code § 63-3613(d))

The method of calculating a refund of sales tax for worthless accounts is described in Sales Tax Administrative Rule 063, excerpted in pertinent part:

02. Rules for Unsecured Credit Sales. The following rules apply to unsecured credit sales:

- a. When a seller cannot collect accounts receivable arising from an unsecured credit sale of tangible personal property subject to sales tax, he may make an adjustment on his sales tax return or apply for a refund of taxes according to this rule.
- b. The adjustment or refund may be claimed on the sales tax return for the month in which the bad debt adjustment is made on the books and records of the taxpayer. The tax for which the credit or refund is sought must be included in the amount which is financed and which is charged off as a bad debt for income tax purposes.
- c. A written claim for the refund may also be filed with the State Tax Commission within three (3) years from the time the tax was paid to the State Tax Commission. The State Tax Commission will review all such refund claims. See Rule 117 of these rules, Refund Claims.

...

05. Amount of Credit Allowed. The amount of credit that can be claimed is the amount of sales tax that is uncollectible. If both nontaxable and taxable items are financed, credit may be taken only for that portion of the bad debt which represents unpaid sales tax..... (IDAPA 35.01.02.063...)

However, sales tax refunds are subject to a statute of limitations:

Refunds, limitations, interest. (a) Subject to the provisions of subsection (b) of this section, if any amount due under this chapter has been overpaid, the excess amount may be credited on any amount then due to the state tax commission from the person by whom the excess was paid and any balance refunded to that person. (b) (1) No such credit or refund shall be allowed after three (3) years from the time the payment was made to the state tax commission, unless before the expiration of such period a written claim therefor is filed with the state tax commission by the claimant or the claimant's representative, but only if the claimant has authorized in writing the representative to file a claim (Idaho Code § 63-3626, excerpted in pertinent part).

Analysis

Using the taxpayer's records, the Bureau calculated the correct amount of bad debt, compared this to the credit taken by the taxpayer, and issued the Notice to recover the amount it deemed in excess of what was refundable. The taxpayer does not disagree with the method of calculation used by the Bureau to determine the sales tax credit allowed during the audit period. The taxpayer's only argument is that the Commission accepted the sales tax credits taken on monthly sales tax returns filed by the taxpayer, leading him to believe that the calculation was being done correctly.

The taxpayer specifically referred to a sales tax credit taken on the sales and use tax return for the period of September 1, 2009, through September 30, 2009, which was prior to the audit period. The taxpayer claimed that additional documentation was requested in order to identify the nature of the sales tax credit claimed on that return. Documentation was submitted and reviewed by a Commission employee and the sales tax credit taken on the return was allowed. The taxpayer's position is that by allowing the sales tax credit, the Commission led it

to believe that the calculation of the credit was being done correctly, so it continued to calculate the credits in the same way.

After the informal hearing, the Commission examined the documentation on which the taxpayer relied, specifically the sales and use tax return for the period of September 1, 2009, through September 30, 2009, and found that the documentation provided by the taxpayer did not contain enough information to determine how the sales tax credit for bad debt was calculated. It is important to note that taxpayer accounting requested the aforementioned documentation to verify what the sales tax credit was being taken for, rather than to verify how the sales tax credit was calculated.

The taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. 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 December 1, 2009, through December 31, 2012.

Unfortunately, in this case, the taxpayer was allowed a credit to which it was not entitled. The Commission enforces the law and even if the processing of the credit allowance prior to the audit was done in error, the Commission is not estopped by the taxpayer's incorrectly filed returns. (See State of Idaho v. Adams, 90 Idaho 195, (1965).)

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed this addition, found it to be appropriate per Idaho Code § 63-3045, and has updated interest accordingly. Interest is calculated through January 31, 2015, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated December 12, 2013, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$35,041	\$0	\$4,033	\$39,074

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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
