

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25780
Petitioner.) DECISION
_____)

On December 31, 2012, 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] (Petitioner), proposing sales tax and interest for the period January 1, 2009, through December 31, 2011, in the total amount of \$18,946.

On February 25, 2013, the Petitioner filed a timely appeal and petition for redetermination of the Notice. At the Petitioner’s request, the Commission held an informal hearing on January 20, 2015. Present at the informal 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

The Petitioner is a [Redacted] based in [Redacted], Idaho, that offers [Redacted]. The Bureau conducted a routine comprehensive audit of the Petitioner’s business for the purpose of determining compliance with Idaho sales and use tax laws.

The Bureau found errors in the examination of non-taxed sales and held these subject to sales tax. The Bureau also found that credits taken by the Petitioner on its sales and use tax return for bad debt had been calculated incorrectly. The Bureau issued a Notice to recover the

amount it deemed in excess of what was refundable and held the errors in the examination of non-taxed sales subject to sales tax.

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. 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 Petitioner in this case is 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

The Petitioner does not disagree with the method of calculation used by the Bureau to determine the sales tax credit allowed during the audit period. The Petitioner's only argument is that it was not aware that the calculation of the sales tax credits for the monthly sales tax returns

was being done incorrectly. The Commission acknowledges that the Petitioner may not have known that the calculations of the sales tax credits were being done incorrectly, but points out that it is a common maxim that ignorance of the law will not excuse any person, either civilly or criminally. Barlow v. United States, 32 U.S. 404 (1833).

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Petitioner's sales and use tax liability for the period January 1, 2009, through December 31, 2011.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed the addition and found it to be appropriate per Idaho Code sections 63-3045 and 63-3046, and updated interest accordingly. Interest is calculated through September 30, 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 31, 2012, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED that the Petitioner pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$16,966	\$3,586	\$20,552

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

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

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
