

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-439-272-960
[Redacted])	
,)	
)	
Petitioner.)	DECISION
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On June 5, 2015, the staff of the Revenue Operations Division (Division) after review by the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Billing Notice (Notice) to **[Redacted]** (Petitioner), proposing adjustments to sales tax, use tax, penalty, and interest for the period March 2015, in the total amount of \$4,373.

The Petitioner filed a timely protest and petition for redetermination of the Notice. At the Petitioner's request, the Commission held an informal hearing on November 13, 2015. Present at the informal hearing were Commissioner **[Redacted]**, Deputy Attorney General **[Redacted]**, Sales Tax Auditor **[Redacted]**, and Tax Policy Specialist **[Redacted]**.

The Commission, having reviewed the audit file and considered the information provided at the hearing and in the months following, hereby upholds the Notice for the reasons detailed below.

Background

The Petitioner is a used car dealership that offers in-house financing. At issue in this decision is the method by which the Petitioner accounted for sales tax charged to customers on sales where the customers' accounts were later deemed worthless.

As an Idaho retailer, the Petitioner files periodic sales tax returns with the Commission, reporting its sales activity and remitting sales tax collected on any taxable sales. Within the audit

period, the Petitioner 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 for bad debt is based on the unpaid principal amount that exists at the time of default.

The Division received a sales and use tax return from the Petitioner and submitted that return to the Bureau so that it could conduct a review of the credit taken for sales tax related to bad debt. At the Bureau's request, the Petitioner supplied additional documentation to support the credit that was taken. Using the documentation provided, the Bureau calculated the amount of bad debt allowed for the period and compared this to the credit taken by the Petitioner, disallowing the difference. This information was forwarded to the Division who then made an adjustment to the sales and use tax return filed by the Petitioner in order to recover the amount it deemed in excess of what was refundable. This adjustment resulted in the Division asserting a liability for the difference by issuing the above-referenced Notice.

The Petitioner protested the Bureau's determination asserting that the Bureau's use of a spreadsheet provided incorrect results. The Petitioner also claims to have received guidance from the Commission staff that it was calculating the credit for bad debt properly.

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 succeeding month (Idaho Code § 63-3623). During the audit period, the

Petitioner was a quarterly filer which required it to file a return by the twentieth day of the month following each quarter end along with any sales tax collected during the quarter.

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:

03. Rules for Secured Credit Sales. The following rules apply to secured credit sales:

a. If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit sale. **b.** If the collateral is repossessed and not seasonably resold at a public or private sale, its retention is considered to satisfy the debt and no bad debt adjustment is allowed. **c.** If the collateral is repossessed and seasonably resold at public or private sale, then the seller is entitled to a bad debt adjustment. However, before calculating the amount of tax that may be credited or refunded, the taxpayer must reduce the amount claimed as worthless by the amount realized from the sale of the collateral...

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

IDAPA 35.01.02.063 limits the amount of credit that can be claimed to the amount of sales tax that is uncollectible and provides the method of calculating a refund of sales tax for worthless accounts. The Commission conducted a review of the calculations done by the Bureau and compared those to the credit claimed by the Petitioner. The review revealed that both the Bureau and the Petitioner were calculating bad debt in almost the same way with two exceptions. Both exceptions were related to what happens to the vehicle after it is repossessed.

The first exception was where there was a subsequent sale of the repossessed vehicles. IDAPA 35.01.02.063.03.c provides that the amount claimed as worthless must be reduced by the amount realized from the subsequent sale of the collateral. In this case nine of the repossessed vehicles associated with the credit taken had been subsequently resold. The Petitioner did not reduce the amount claimed as worthless by the amount realized when the repossessed vehicles were resold.

The Petitioner contended that a repossession is a forced sale and falls within the definition of a sale found in Idaho Code § 63-3612(1) which defines a sale as the “transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.” The Petitioner states that when they repossess a car the title and possession are transferred and wants to know why the Bureau will not consider this to be a sale.

The Commission disagrees with the Petitioner that there is a sale; rather what the Petitioner views as a forced sale is merely what any car dealer with a security interest does in the exercising of rights under the previous sale to take possession of the vehicle for non-payment. For a sale to exist, the transfer must be for a consideration, of which there is none in a repossession of a vehicle. The Commission finds that the repossession of a vehicle is not a sale.

The Petitioner states that it never received payment on the original sale of two of the repossessed vehicles that were subsequently resold and questioned whether this was a rescinded sale. The Petitioner accepted a promissory note, listed on the contract as a “pick up note” as a down payment that was never received.

IDAPA 35.01.02.045.01 defines a rescinded sale as, “[a] transaction in which the seller and buyer place each other in the same positions they were in prior to entering into any sales taxable transaction; and a transaction which meets the rules of the Uniform Commercial Code for revoking acceptance in whole or in part. See Section 28-2-608, Idaho Code:

REVOCATION OF ACCEPTANCE IN WHOLE OR IN PART.

- (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it
 - (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. (Idaho Code § 28-2-608)

The buyer and the seller are not in the same position as they were prior to the sale of the vehicle. The vehicle was not returned by the buyer because of some sort of defect, the vehicle was repossessed by the Petitioner because the buyer did not pay for the vehicle. Further, this scenario is entirely unlike a situation where a customer returns an unused product to the store for a refund. Here the parties are in their positions due to a default on the agreement, not based upon any agreement to rescind the sale. Additionally, the Petitioner would likely have legal remedies to pursue against the buyer for default on the agreement. The Commission finds that the sale of a vehicle that is later repossessed does not meet the definition of a rescinded sale.

The Commission finds the Bureau's adjustment of the credit claimed for the repossessed vehicles that were resold to be appropriate.

The second exception was where the Petitioner still retained the vehicle when the bad debt refund was claimed. IDAPA 35.01.02.063.03.b provides that the repossession and retention of collateral satisfies the debt and no bad debt adjustment is allowed. In this case, four of the repossessed vehicles associated with the credit taken were still in the Petitioner's inventory. The Commission finds the Bureau's reduction of the credit claimed for these amounts to be appropriate, but encourages the Petitioner to resubmit the claim once they are seasonably resold if there is a refund to be claimed at that time.

The Petitioner also claims to have received guidance from the Commission that it was calculating its bad debt claims correctly. In effect, the Petitioner is raising the doctrine of

equitable estoppel. Webster's Ninth New Collegiate Dictionary, published by Merriam-Webster, Inc. defines "estoppel" as "a legal bar to alleging or denying a fact because of one's own previous actions or words to the contrary."

Because the Petitioner did not receive any statements in writing, it is not clear that the Commission staff members understood the precise nature of the Petitioner's question.

Furthermore, the Idaho Supreme Court has ruled that "[t]he government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax." (State ex rel. Williams v. Adams, 90 Idaho, 195, 409 P.2d 415 1965). For this reason, the State Tax Commission would not be estopped even if there were evidence of incorrect guidance from the Tax Commission.

The Petitioner did not provide evidence adequate to establish that the amount asserted in the Billing Notice is incorrect. As a result, the Commission will uphold the Notice. 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 Petitioner 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 Petitioner's sales and use tax liability for the period March 2015. The Division added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly.

Interest is calculated through July 29, 2016, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Billing Notice dated June 5, 2015, 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, penalty and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$ 4,313	\$ 43	\$ 211	\$ 4,567

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 _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
