

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

In the Matter of the Protest of

[Redacted]

Petitioner.

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DOCKET NO. 1-181-485-056

DECISION

On July 6, 2016, 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, use tax, penalty, and interest for the period December 1, 2012, through November 30, 2015, in the total amount of \$2,921.

On September 6, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on March 7, 2017. Present at the informal hearing was Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Appeals 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 to uphold the Notice.

**Background**

Petitioner sells and services both new and used [Redacted] vehicles. In addition, Petitioner sells replacement parts, accessories, and apparel.

The Bureau conducted a routine comprehensive audit of Petitioner's business for the purpose of determining compliance with Idaho sales and use tax law. The Bureau found errors in the examination of Petitioner's sales, ordinary purchases, and donations.

Petitioner is in agreement with the Bureau's findings with the exception of two issues; the imposition of tax on assembly fees, and convenience fees associated with the sale of a motor vehicle.

## Analysis

### Assembly Fees

A customer purchasing a new [Redacted] vehicle has options they can select that will be added to the vehicle being sold, such as a windshield or a radio. These options are then added to the purchase price of that vehicle along with an assembly fee for the labor associated with modifying the vehicle with those options. The Bureau determined that the assembly fee associated with the sale of the [Redacted] vehicle is part of the sales price subject to sales tax and held this subject to sales tax.

Petitioner protested the imposition of sales tax on labor being taxed as part of the sales price, arguing that the [Redacted] vehicle was already in a condition ready for delivery whether or not an option is selected, and therefore the assembly labor should not be part of the sales price subject to sales tax. Petitioner references IDAPA 35.01.02.11.04, asserting that the labor in question is incidental to the retail sale of the unit and is specifically exempt from tax if the charge for the service is separately stated:

- 04. Kinds of Services Incidental to the Sale.** Two (2) kinds of services rendered incidental to a retail sale are specifically exempt from tax if the charge for the service is separately stated. They are:
- a.** Charges for transportation after the sale. See Section 63-3613, Idaho Code, and Rule 061 of these rules; and
  - b.** Installation charges. See Section 63-3613, Idaho Code, and Rule 012 of these rules.

Idaho imposes a tax on the sale of tangible personal property. The term sale means “any 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” Idaho Code § 63-3612.

Idaho Code § 63-3613 defines “sales price,” as follows:

**Sales price.** -- (a) The term “sales price” means the total amount for which tangible personal property, *including services agreed to be rendered as a part of the sale*, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold
2. The cost of materials used, labor or service cost, losses, or any other expense. (emphasis added in italics)

The statute includes “services agreed to be rendered as part of the sale,” as well as labor, service cost, and “any other expense” in the amount subject to tax. By including the words, “services agreed to be rendered,” the legislature expressly indicated that some services were intended to be part of the sales price subject to tax even if the charge for such services is stated separately from the charge for the property.

Petitioner has essentially argued that the fees for adding on the options selected by its customer is installation labor which is not part of the sales price subject to sales tax per Idaho Code § 63-3613 (b)4 as follows (excerpted in pertinent part):

(b) The term “sales price” does not include any of the following:

. . . .

4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the “sales price” of such manufactured home. . . .

Idaho Code § 63-3612(2)(d) provides that a sale includes, “A transfer of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.” The retailer’s actions here constitute part of a sale per Idaho Code § 63-3612(2)(d). The retailer’s actions are also part of the services agreed to be rendered as a part of the sale per Idaho Code § 63-3613(a). *See also*, IDAPA

35.01.02.011.02.

These services are not exempt. The exemption in Idaho Code § 63-3613(b)(4) speaks to the common example of, for instance, a customer buying a home refrigerator. As long as the installer separately states the labor or services to install the refrigerator separate from the price of the refrigerator, only the refrigerator will be taxable. This is fundamentally different than adding an icemaker to the refrigerator. The labor to add an icemaker option to the refrigerator before it is installed would be part of the sale price subject to sales tax. *See* IDAPA 34.01.02.014.05

### **Convenience Fees**

Another item that the Bureau held was part of the sales price subject to sales tax is the separately stated convenience fees charged by Petitioner when its customers use credit cards. Petitioner protested the imposition of sales tax on these fees, asserting that this is how they recover some of the fees that they have to pay the credit card company. Petitioner asserts that these fees are addressed under IDAPA 35.01.02.043.03 which states that the “[s]ales price does not include charges for interest, carrying charges, amounts charged for optional insurance on the property sold, or any finance charge. These various charges may be deducted from the total sales price if they are separately stated in the contract. In the absence of a separate statement, it will be presumed that the amount charged is part of the total sales price.” Petitioner posits that the convenience fees are very much like carrying charges and therefore should be excluded from the sales price subject to sales tax.

The amount charged for “finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales” is excluded from the sales price per Idaho Code § 63-3613 (b)(6). Generally, a finance charge is the amount owed to a lender by a purchaser-debtor to be allowed to pay for goods purchased over a series of installments, as opposed to one

lump sum at the time of sale or billing.

The Bureau held that the separately stated convenience fees charged by Petitioner when its customers use credit cards is subject to sales tax. The Commission finds that the fee, in this case, is not a charge for interest. It is not a carrying charge, which is defined as “interest on an unpaid balance in a charge account” *Scribner-Bantam English Dictionary*, NY, NY, 1979. It is not an amount charged for optional insurance on the property sold. It is not a finance charge. It is a convenience fee, charged by Petitioner to cover its own costs. The convenience fee is a service rendered as part of the sale, not a finance charge.

### **Conclusion**

On appeal, a deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (*citing Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission will uphold the Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s sales tax and use tax liability for the period December 1, 2012, through November 30, 2015.

The Bureau added interest to the sales tax and use tax deficiency. The Commission reviewed the addition, found it to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through November 30, 2017, 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 July 6, 2016, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,685	\$343	<u>\$3,028</u>

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

An explanation of Petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 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.

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