

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 22401
)	
Petitioner.)	DECISION
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On September 18, 2009, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination (Notice) to [Redacted] (Petitioner), denying a refund of sales tax and interest for the period December 1, 2006, through December 31, 2008, in the total amount of \$130,000.

On November 3, 2009, Petitioner filed a timely appeal and petition for redetermination of the Notice.

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 Notice.

Background and Audit Findings

On December 16, 2008, Petitioner submitted a letter requesting a refund of sales tax in the amount of \$130,000 related to worthless accounts that had been charged off for federal income tax purposes. Petitioner advised in its letter that documentation supporting this claim would be available upon request. Petitioner included as an exhibit, an analysis as to why it, as a third party, had the right to request a refund of sales tax related to worthless and uncollectable debt. At the end of the analysis, Petitioner asserts that it is entitled to a refund of sales tax in the amount of \$130,000 and the associated interest, but goes on to assert that it reserves the right to amend the amount of the claim at a later date. Petitioner's letter indicated that it had enclosed a Sales Tax Refund Claim form and a Power of Attorney form, however neither was included.

On December 18, 2008, the Bureau requested documentation to support Petitioner's Claim. The letter itself, prepared and signed by a Principal Tax Auditor, requested the missing Form TCR and Power of Attorney form along with the following documentation to support the claim related to the Idaho bad debts claim:

1. Copy of all contracts on which a bad debt is claimed. This provides evidence that Idaho sales tax was changed, the date of the sale, and down payments.
2. Information on how much was paid on principal during the contract life.
3. Information on the subsequent sale of the property if it was repossessed.
4. Information on service/insurance contract refunds if there were any.

Petitioner was advised in the letter that written request itself does not stop the statute of limitations due to the fact that it was submitted without any specific names, dates, and amounts that could later be tied to transactions.

No documentation was submitted to the Bureau as of September 18, 2009 at which time the Bureau denied the requested refund.

Petitioner's Protest

Petitioner protested the Bureau's denial of the claimed refund on November 3, 2009, stating that that it was in the process of obtaining detail level documentation to support its claim. Petitioner asserted that it had not received nor had it been contacted by the state notifying them that an auditor had been assigned to examine the claim.

Petitioner predicts that the Bureau will deny the refund claimed in spite of the provision of additional documentation because previous refunds had been denied due to the statute of limitations. Petitioner asserts that it has been told by the Bureau that in order for a refund claim

to be perfected or valid, the claim must be in writing and have supporting documentation on which to base the refund claim.

Petitioner asserts that there is nothing in Idaho law that requires detailed account by account documentation to be provided at the time of filing a refund claim. Petitioner admits in its protest letter that the submission of lump sum refund requests is essentially the way it is protecting its “potential right” to refunds by filing timely claims. By doing this Petitioner points out that it can still get a refund of the unpaid portion of sales tax for a vehicle purchased in 2005, but written off for income tax purposes in 2009, a period that would be outside of the statute of limitations otherwise.

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. During the refund period, Petitioner was a quarterly filer which required them 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 process for submitting a refund claim is described in Sales Tax Administrative Rule 117, excerpted in pertinent part:

01. In General. Application for refund of sales or use taxes paid in excess of those properly imposed by the Sales Tax Act, shall be in accordance with the provisions of this rule. . . . (7-1-93)

04. Bad Debts. Claims for refunds arising from bad debts must be filed with the Tax Commission in the manner prescribed by Rule 063 of these rules. . . . (5-3-03)

06. Claim Form. Form TCR, Sales Tax Refund Claim, may be used to file for a refund from the Commission. Although this form is available for this purpose, it is not required. A refund claim, however, must be in writing. The claim must include the full name and address of the claimant and his seller’s permit number or use tax account number if the claimant has such a number. The claim must state the amount of the refund include a detailed statement of the reason the claimant believes a refund is due, including a description of the tangible personal property, if any, to which the tax relates and the date on which the claimed excess taxes were paid. If the claimant is the retailer, the claim for refund must include a statement, under oath, that the amount of tax plus interest refunded to the retailer have been or will be refunded by the retailer to the purchaser. . . . (4-2-08)

IDAPA 35.01.02.117

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: (7-1-93)

a. If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit sale. (7-1-93)

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. (7-1-93)

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... (3-30-01)

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. (7-1-93)

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

On May 7, 2012, Petitioner provided the Commission with a listing of the retail installment sales contracts identifying the transactions included in the “potential” claim made almost five years prior. On July 30, 2014, Petitioner provided an updated listing of the retail installment sales contracts identifying additional transactions which it has included in the “potential” claim and submitting a revised sales tax refund claim in the amount of \$249,921.

Petitioner admitted that no worthless account existed at the time the request was made and that the request was made in order to hold open the statute of limitations. The sales tax act allows a retailer to take credit for taxes previously paid on amounts represented by accounts found to be worthless but requires that the request be made within the statute of limitations. Petitioner cannot disregard the statute of limitations set by the Legislature by submitting refund requests for each period just in case an account becomes worthless. This speculative behavior would result in the Commission being forced to pay interest for extended periods of time while Petitioner waited for worthless accounts to arise

The Commission does not agree with Petitioner that the submission of a refund request for worthless accounts that may be written off in the future can in any way hold the statute of limitations open until they have some actual worthless accounts. Filing a claim for worthless accounts where there are none, does not constitute a valid refund claim. The Commission holds that Petitioner failed to submit a valid claim within the statute of limitations period.

Conclusion

THEREFORE, the Notice of Taxpayer Initiated Refund Determination dated September 18, 2009, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

DATED this _____ day of _____, 2017.

IDAHO STATE TAX COMMISSION

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.
