



The Bureau conducted a comprehensive audit to determine Petitioner's compliance with Idaho sales tax and use tax laws. Errors were noted in several areas, including untaxed accessory installation labor as part of a vehicle sale; out-of-state deliveries; sales to nonresidents of Idaho; optional warranty and goodwill repairs; untaxed sales of parts for which an exemption did not apply; asset acquisition and disposal; expenses held subject to use tax, and propane purchases. A fraud penalty was imposed on the Notice.

### **PETITIONER'S PROTEST**

Petitioner protested many of the transactions held taxable. After issuing the Notice, the Bureau continued working with Petitioner, and resolved some of the protested items. The remaining issues as protested by Petitioner include but are not limited to: vehicles sold to non-Idaho residents; acceptance of exemption certificates; Idaho sales tax imposed on vehicles for which Petitioner collected and remitted sales tax to another state; items given away to customers or as part of a promotion; installation charges for accessories sold as part of a new vehicle; tickets sold at Petitioner's business location on consignment; and the imposition of the fraud penalty.

### **RELEVANT TAX CODE AND ANALYSIS**

In Idaho, the sale, purchase, and use of tangible personal property is taxable unless an exemption applies. Idaho-registered retailers doing business in this state have an obligation to collect sales tax on sales that do not qualify for an exemption. *See* Idaho Code §§ 63-3610, 63-3611, and 63-3619.

#### **NONRESIDENT SALES**

A retailer can make sales of motor vehicles and vessels tax exempt if the buyer is a non-resident and complies with certain conditions. *See* Idaho Code § 63-3622R. An exempt sale under these circumstances must be documented by a Commission certificate, Form ST-104-MV. When this form is filled out by the buyer for a valid exemption and is kept by the retailer, the retailer

usually has no obligation to collect tax. *See* IDAPA 35.01.02.101.05 and 35.01.02.107.10.b.

Idaho Code § 63-3622R presently provides the following exemption for specific sales to non-residents of Idaho:

**63-3622R. MOTOR VEHICLES, USED MANUFACTURED HOMES, VESSELS, ALL-TERRAIN VEHICLES, TRAILERS, UTILITY TYPE VEHICLES, SPECIALTY OFF-HIGHWAY VEHICLES, OFF-ROAD MOTORCYCLES, SNOWMOBILES AND GLIDER KITS.**

There are exempted from the taxes imposed by this chapter:

(a) Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles (SOHVs), motorcycles intended for off-road use and snowmobiles, for use outside of this state even though delivery be made within this state, but only when:

(1) The motor vehicles, vessels, ATVs, UTVs, SOHVs, motorcycles intended for off-road use, snowmobiles or trailers will be taken from the point of delivery in this state directly to a point outside this state; and

(2) The motor vehicles, vessels, ATVs, UTVs, SOHVs, motorcycles intended for off-road use, snowmobiles and trailers will be registered immediately under the laws of another state, will be titled in another state if required to be titled in that state, will not be used in this state more than ninety (90) days in any twelve (12) month period, and will not be required to be titled under the laws of this state.

(3) For the purpose of this subsection, the terms “all-terrain vehicle” or “ATV,” “utility type vehicle” or “UTV,” and “specialty off-highway vehicle” or “SOHV” mean all-terrain vehicle or ATV, utility type vehicle or UTV, and specialty off-highway vehicle or SOHV as defined in section 67-7101, Idaho Code.

IDAPA 35.01.02.107.10 currently provides in pertinent part:

**10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.**

**a.** Sales of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles, off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when:

i. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and

ii. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve month period.

**b.** To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104-MV.

#### IDAPA 35.01.02.107.10

Utility type vehicles (UTVs) and specialty off-highway vehicles (SOHVs) were not included in the nonresident exemption afforded by Idaho Code § 63-3622R and IDAPA 35.01.02.107 until July 1, 2015; prior to that date, the only way for a customer residing outside Idaho to purchase a UTV or SOHV from an Idaho retailer without paying Idaho sales tax would be to have delivery of the vehicle occur outside the state of Idaho.

During the audit, Petitioner presented three different types of documentation to substantiate its out-of-state delivery of questioned UTV sales to nonresidents. First, Petitioner provided delivery invoices. On some of the UTV sales to nonresidents, the sales packets contained a one-page invoice made to look like a delivery person had issued the invoice to Petitioner for their delivery service. However, the Bureau found Petitioner prepared these documents internally and put them in each of the files to give the appearance that someone had delivered the vehicle out of state rather than the customer picking it up here in Idaho. The Bureau contacted customers who were nonresidents of Idaho to confirm the UTV was delivered out of state; two of the customers from the Bureau's sample confirmed they picked up their vehicle in Idaho, contrary to the delivery invoice maintained by Petitioner. During the informal hearing, Petitioner acknowledged that one of its salespersons prepared the delivery invoices specifically for the Bureau.

Second, Petitioner presented the Bureau with fuel receipts from locations near a customer's home. Petitioner told the Bureau that its delivery staff retained these receipts as evidence of

delivery. However, in a subsequent phone call with the Bureau, Petitioner's customer stated that he had been contacted the previous year by Petitioner and faxed in his personal fuel receipts from his trip home after picking up his new vehicle from Petitioner's location in Boise. Petitioner then presented the receipts to the Bureau as fuel receipts from its own delivery people. After the informal hearing, Petitioner provided copies of fuel receipts indicating a trip to Nevada as well as a check image indicating its employee was reimbursed for those fuel receipts. However, the Nevada delivery was not held taxable by the Bureau. Petitioner did not provide any additional information regarding the transactions included in its protest.

Finally, Petitioner provided the Bureau with a signed statement from an individual who claimed to have delivered vehicles outside Idaho to three different customers. Bureau staff contacted two of the three customers by telephone and was told they had picked up their vehicles in Boise.

The Commission upholds the sales to nonresidents held taxable by the Bureau. The evidence presented by Petitioner is insufficient to overcome its customers' statements that the vehicles were picked up at Petitioner's location in Idaho, then transported by the customer outside the state. At the time of these transactions, there was no exemption available to nonresidents who took delivery of the UTV in Idaho.

#### ACCEPTANCE OF EXEMPTION CERTIFICATES

The Idaho Sales Tax Act states that all sales are presumed taxable unless an exemption applies. Idaho Code § 63-3622 provides retailers with specific methods to document exempt sales:

**63-3622. Exemptions -- Exemption and resale certificates  
-- Penalties.**

(a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for

Idaho Code § 63-3622

the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with

regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

Idaho Code § 63-3622

Petitioner protested two transactions it believed were exempt from tax because each purchase was made for use in the purchaser's business. The first transaction was the sale of a vehicle to an Idaho farmer. No exemption form was provided to support the untaxed sale; therefore, the Commission finds this sale is taxable. The second transaction was the sale of a vehicle to the owner of [Redacted] a business located in Oregon. The business owner provided a Form ST-101, *Sales Tax Resale or Exemption Certificate* (ST-101) to Petitioner indicating the purchase was for resale, and described his business on the form as an ATV and alternator/starter repair business. During the informal hearing, Petitioner stated it has sold several vehicles to the business owner, which the business owner utilizes for some period-of-time before ultimately selling as a used vehicle.

The Commission has previously established that the legislature intended a low threshold for the acceptance of exemption certificates by sellers. *See* Idaho State Tax Commission Docket 21727. The seller can only be held liable for the tax if the seller's actual knowledge is such that he knows the buyer cannot claim the exemption at the time of sale, or if the purchase is taxable as a matter of law. In this case, Petitioner made an exempt sale of a vehicle to a purchaser who claimed the resale exemption. However, the purchaser is not in the business of selling vehicles, as documented by both the purchaser's description of his business on the ST-101 and Petitioner's

knowledge of the purchaser's business as shared at the informal hearing. Petitioner accepted an exemption certificate on a sale for which it knew the claimed exemption did not apply; therefore, the Commission finds the transaction to be taxable.

#### TAX REMITTED TO ANOTHER STATE

Petitioner's protest included one transaction where it collected Washington sales tax, even though the sale was completed in the state of Idaho. Petitioner contends the customer's financing arrangements required that Washington sales tax be collected on the transaction. Idaho Code § 63-3621(j) provides a credit against the Idaho tax due for tax legally paid to another state. However, as the sale occurred within the state of Idaho, Idaho sales tax was due. No credit will be given for the Washington sales tax, as it was collected in error.

#### DONATIONS

The Bureau held taxable several transactions where Petitioner donated or gave away items which had been purchased ex-tax for resale. The donor is the consumer of donated goods and must pay sales tax or use tax on the purchase price of the goods. *See* IDAPA 35.01.02.051.04. Some of these transactions constituted goodwill repairs, where Petitioner performed services outside of a factory warranty agreement. Petitioner contends it was reimbursed by the manufacturer or provided with a part to replenish its inventory after making these repairs, therefore it is not the consumer of the parts. Petitioner did not provide any documentation of the parts received from the manufacturer in conjunction with these types of repairs. In any event, tax is due on the parts when they are removed from Petitioner's resale inventory. Petitioner is responsible for the tax on these transactions.

During the audit period, Petitioner "gave away" a vehicle as part of a contest. Petitioner was one of many sponsors of the contest. Petitioner removed the vehicle from its inventory and gave it to the contest promoter, who removed the vehicle from Idaho and displayed the vehicle at

races in other states. Ultimately, the vehicle was delivered to the contest winner, who was located in California. Petitioner contends it is one of many sponsors of the contest, and asserts the vehicle should not be subject to Idaho sales tax or use tax because the winner of the vehicle was outside Idaho. Although the vehicle was ultimately delivered in California to a nonresident of Idaho, the vehicle became subject to tax upon removal from Petitioner's resale inventory in accordance with IDAPA 35.01.02.051.04.

TAXABLE LABOR FOR ADD-ONS

“Sales price” is the portion of a sale subject to sales tax. Idaho Code § 63-3613 defines sales price as “the total amount for which tangible personal property is sold, rented, or leased, including services agreed to be rendered as a part of the sale.” IDAPA Rule 35.01.02.043.02.a further clarifies that “any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer” are included in the taxable sales price.

Petitioner sells new and used vehicles to customers. On many vehicle sales during the audit period, the customer also purchased additional parts and accessories, which Petitioner then fitted to the vehicle as part of the sale. Petitioner did not tax the labor required to install these parts and accessories. Petitioner contends it separately stated the installation charges in question, therefore the installation is not taxable. Petitioner charged a setup fee to cover the labor costs incurred in preparing a vehicle for sale when it arrives at the dealership, and correctly charged sales tax on that labor. Much like the setup fee, the labor to fit additional parts and accessories is part of the work required to prepare the vehicle for sale in its “finished state ready for delivery and in the condition specified by the buyer,” and is subject to tax. In these transactions, Petitioner's customer is seeking a vehicle with specific parts and/or accessories; the complete retail sale includes the vehicle and any modifications which requires the fitting of parts and accessories. In

these transactions, the retail sale is the sale of the whole unit, not individual parts or accessories. The labor charges, although separately stated, are required to bring the vehicle to a finished state ready for delivery to the purchaser. As such, the Commission finds in favor of the Bureau.

### TICKET SALES

Petitioner sold tickets to motorsports events on behalf of the event promoters during the audit period and did not collect sales tax on these transactions. Charges for admission to a place or event in Idaho are taxable. *See* Idaho Code § 63-3612(2)(e) and IDAPA 35.01.02.030.01. Every agent entrusted with tangible personal property or any personal property for sale shall be responsible for the proper collection and remittance of tax. *See* IDAPA 35.01.02.020. Petitioner provided an email from one promoter which stated the promoter had remitted sales tax on ticket sales during the period in question; however, the documentation does not provide any accounting of the specific tickets sold by Petitioner and/or sales tax remitted for specific tickets sold. The Commission finds Petitioner is responsible for the sales tax on these transactions.

### FRAUD PENALTY

Petitioner objects to the fraud penalty imposed by the Bureau. The failure to collect and remit all taxes from customers may constitute fraud:

#### **Penalties and additions to the tax in case of deficiency.**

(a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

Idaho Code §63-3046.

IDAPA 35.02.01.420.01 provides guidance to determine if a fraud penalty applies:

**In General.** In determining fraud penalties, the Tax Commission shall review all facts and circumstances surrounding preparation of a taxpayer's return including all of the following:

- a. Public and private statements regarding income or sales of the taxpayer;
- b. Business and financial practices of the taxpayer;
- c. Taxpayer's knowledge of principles of finance, accounting, law, or taxation;
- d. Objective and subjective evidence showing or tending to show intent to evade payment of taxes.

As discussed above, certain sales made by Petitioner during the audit period were exempt from tax only if delivery of the vehicle occurred outside the state of Idaho. Petitioner provided several types of records to document its deliveries of these vehicles to other states. The Bureau attempted to verify the accuracy of these documents by contacting Petitioner's customers directly. In several cases, the customers acknowledged picking the vehicles up at Petitioner's business location in Idaho, contradicting the delivery information presented by Petitioner. In one instance, the Bureau contends Petitioner misrepresented a customer's fuel receipts as their own in order to present the transaction as an out-of-state delivery. For other sales, Petitioner provided delivery invoices to indicate the vehicle was delivered outside Idaho; however, during the informal hearing, Petitioner acknowledged one of its longtime salespersons "wrote up stuff for the auditor," and Petitioner simply accepted this documentation as prepared by its salespersons. Finally, Petitioner provided an affidavit from one of its staff, who claimed to have made three deliveries out of state. Two of the three customers later confirmed to the Bureau that their vehicles were not delivered; rather, these customers picked up their vehicles at Petitioner's business location.

Petitioner failed to maintain adequate records to substantiate exempt sales made to customers. Petitioner acknowledges that it prepared some of the documentation after it was contacted by the Bureau regarding the audit. Other records provided by Petitioner to document the out-of-state deliveries were refuted by the customers whose vehicles were supposedly delivered outside Idaho. Throughout the audit, Petitioner provided false documentation to conceal

the deliveries made to nonresidents at its business location in Idaho. Pursuant to IDAPA 35.02.01.420.01, Petitioner's private statements, business and financial practices, and knowledge that it was submitting false documents to the Bureau clearly demonstrate by objective and subjective evidence an intent to evade the tax required by Idaho codes and rules. As a result, the Commission will uphold the fraud penalty proposed by the Bureau. Per statute, the penalty must be applied to the entire tax liability shown on the Notice; there is no opportunity to apply the penalty only to the tax due on the sales claimed to be delivered out of state.

### CONCLUSION

On appeal, a deficiency determination issued by the Tax Commission "is presumed to be correct, and the burden is on the taxpayer to show that the Commission's decision is erroneous." *See 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, as modified by the Bureau, is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission will uphold the Notice as modified.

Absent information to the contrary, the Commission finds the Notice as modified by the Bureau to be a reasonably accurate representation of Petitioner's sales tax and use tax liability for the period June 1, 2013, through May 31, 2016.

The Bureau added interest to the sales tax 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 April 15, 2019, 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 August 2, 2017, is hereby APPROVED as MODIFIED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$71,510	\$35,755	\$9,656	\$116,921
	Less Payment Effective 9-12-17:		<u>(\$49,698)</u>
	Amount Now Due:		<u><u>\$67,223</u></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 \_\_\_\_\_, 2019.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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.

---