

determined a sales tax exemption does not apply to Petitioners' Vehicle purchase and that sales tax is due.

Petitioners' Protest

Petitioners protest the Bureau's sales tax assessment contending the dealership is responsible for the sales tax due. Petitioners also contend that Petitioner A is exempt as a cosigner.

Relevant Tax Code and Analysis

Idaho sales tax is imposed on retail sales of tangible personal property and use tax is imposed on the storage, use, or consumption of tangible personal property, unless an exemption applies under sections 63-3619 and 3621, Idaho Code. The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property under section 63-3615(b), Idaho Code.

No exemption applies to Petitioners concerning the Vehicle purchase. An exemption does exist *for Idaho nonresidents* that use tax does not apply to a motor vehicle used in Idaho fewer than 90 days in any 12 month period, provided the motor vehicle is not required to be registered or licensed under Idaho law and is registered under the laws of the owner's state of residence under section 63-3621(k), Idaho Code. This exemption does not apply because Petitioner A is an Idaho resident.

Petitioner A contends that a motor vehicle dealer is liable for taxes it fails to collect from its customers. Petitioner A also references the Commission's website which states, "Idaho law requires retailers who are doing business in Idaho to get a seller's permit and collect sales tax on the sales of goods they ship or deliver to customers in Idaho." The Commission agrees that a dealership has a statutory requirement to collect and remit taxes, and is personally liable for the payment of taxes which it fails to collect and remit as prescribed in section 63-3627, Idaho Code.

However, if the dealership fails to collect a tax for which there is no exemption, Petitioners are not then released from their obligation to pay the tax due. The legal incidence of the tax is on the purchaser of the tangible personal property. *See* section 63-3619(b), Idaho Code. Additionally, section 63-3624(h), Idaho Code, states:

When the tax commission determines that a retail sale is not exempt and the purchaser has failed to voluntarily pay sales or use tax in regard to the property or services purchased, the tax commission may collect the sales tax which was due at the time of the sale or the use tax due at the time of storage, use or other consumption of the taxable goods or services by issuing to the purchaser a notice of deficiency determination, asserting tax together with interest, at the rate provided in section 63-3045, Idaho Code, and may assert penalties found elsewhere in this chapter.

Thus, the Commission has the authority to seek payment of the tax due from Petitioners.

Petitioner A also argues he is exempt as a cosigner, since Petitioner B, an Oregon resident, was the actual buyer. However, this conclusion is incorrect. Petitioner A, as a cosigner, is an obligated party under the Vehicle sales contract. Further, the Vehicle title paperwork lists Petitioner A as the co-owner of the Vehicle.

Lastly, Petitioner A claims the first line of the tax code online states, “Sales tax is due when you buy a motor vehicle to use in Idaho.” The Commission is unable to locate any such citation in Idaho’s tax code. However, IDAPA 35.01.02.106.01 clearly states in pertinent part, “the sale, lease, rental, or purchase of a motor vehicle is subject to sales and use tax,” unless an exemption applies. Again, because an exemption does not apply to the Vehicle purchase, sales tax is due. Therefore, the Commission finds the Bureau properly assessed sales tax on the Vehicle purchase.

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.” *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 Petitioners to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioners 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 Petitioners' sales tax liability for the period February 1, 2018, through February 28, 2018.

The Bureau added interest to the sales tax deficiency. The Commission reviewed this addition, found it to be appropriate per section 63-3045, Idaho Code, and updated interest accordingly. Interest is calculated through April 30, 2019 and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code, until paid.

THEREFORE, the Notice of Deficiency Determination dated March 28, 2018, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,279	\$63	\$1,342

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

An explanation of the Petitioners' 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.
