

for refund to receive credit for the loans where it paid recourse, as described above. In most of the transactions claimed as bad debts, [Redacted] received the vehicle back from [Redacted], and subsequently resold the vehicle at retail; however, in a few transactions claimed as bad debts during this period, the vehicle was either never located or wrecked.

The Bureau reviewed Petitioner's claims of bad debt and approved a portion of the refund claimed. Petitioner protested the denied portion of its claim.

Petitioner's Protest

Petitioner protested the Bureau's determination on three grounds. First, Petitioner contends IDAPA Rule provides that if a retailer repossesses goods and resells them at retail, the entire amount of the bad debt may be written off. This is how Petitioner calculated the amount claimed for refund.

Next, Petitioner claims the Bureau "improperly characterized a substantial portion of the transaction." Petitioner states that as part of the "with recourse" business model, [Redacted] paid the financial institution on defaulted loans to receive title to the repossessed vehicle. Rather than Petitioner reimbursing [Redacted] for the payment it made to the financial institution, Petitioner asserts it made two payments to [Redacted] – one amount that Petitioner considered payment for the vehicle as part of a "wholesale private sale" between [Redacted] and Petitioner, and another payment for the balance of the worthless debt. Petitioner believes that the Bureau's failure to acknowledge these interim transactions caused the Bureau to credit Petitioner for less tax than should have been refunded.

Finally, Petitioner states the Bureau's failure to process its claim(s) for refund in a timely manner is partially to blame for its current tax deficiency. Petitioner asserts it has paid over

approximately \$116,000 in sales tax it did not collect from financed sales, and requests the Commission consider this when making its determination.

Relevant Tax Code

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. *See* 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. *See* Idaho Code § 63-3619.

According to Idaho Code § 63-3619, tax is due to the Commission for credit sales prior to full collection by the retailer from its customers when 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.

This practice is confirmed in Sales Tax Administrative Rule 063, which states that “tax is owed to the state at the time of sale, regardless of when the payment is made by the customer.” *See* IDAPA 35.01.02.063.01.

However, Idaho Code § 63-3613(d) 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....

The method of calculating a refund of sales tax for worthless accounts is described in Sales Tax Administrative Rule 063 (IDAPA 35.01.02.063), 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)

Id

Analysis

The Bureau's calculation of sales tax to be refunded due to bad debt uses Petitioner's contracted numbers (sales price, interest rate, fees, etc.) to determine a total ratio of principal to interest at the end of the loan period. This ratio is then applied to the total payments received from the customer to establish the sales tax due on the principal collected by the seller; the remaining sales tax collected by the retailer and paid over to the Commission would be refunded. When considering the amount of sales tax to be refunded on the portion of the transaction considered bad debt, the retailer must reduce the amount deemed worthless by any amount obtained by selling the repossessed collateral.

Petitioner contends that IDAPA 35.01.02.063 provides that when repossessed collateral is subsequently resold, the retailer may claim the entire value of the original transaction as bad debt. If Petitioner's assertion was true, the entire sales price of the first transaction would be considered bad debt, without any adjustment for the amount received when the repossessed vehicle was resold. This directly contradicts IDAPA 35.01.02.063.03.c, which specifies that the taxpayer must reduce

the amount claimed as worthless by the amount realized by the sale of the collateral. In the situation described by Petitioner, the possibility exists for the retailer to engage in a cycle where the same vehicle is sold, repossessed, and resold any number of times, and sales tax would be due to the state only on the final sale of the vehicle. This scenario is incompatible with Idaho Code §§ 63-3612 and 63-3619, which clearly establish that sales tax is due on every sale unless an exemption applies, and that the retailer (in this case, Petitioner) is responsible for collecting the sales tax on the transaction regardless of the customer's method of financing the purchase. A subsequent sale of the same merchandise does not provide an exception to these provisions.

The Bureau's formula specifies that the amounts allocated to principal and interest are identical for each loan payment, regardless of the outstanding principal or when payments are received. This method provides a clear and equitable calculation for allocating payments between principal and interest, even when payments are late, missed, or made for some amount less than stated in the original contract. Petitioner did not present any evidence that the Bureau did not follow this formula when evaluating Petitioner's claim for refund. The recourse payments between [Redacted] and [Redacted] are not included in the Bureau's calculation.

At some point, Petitioner ceased remitting all the sales tax shown as due on its returns filed with the Commission. During the informal hearing, Petitioner acknowledged it believed its claims for bad debts would offset the liability shown on these returns. However, even if Petitioner's claim for refund had been approved by the Bureau in its entirety, the amount refunded would have been substantially less than the tax due to the state for these unpaid periods. Petitioner had an obligation as a retailer to collect *and remit* sales tax on all its transactions. It failed to do so.

Conclusion

The Commission, having considered all the information available, upholds the Notice as prepared by the Bureau.

THEREFORE, the Notice dated April 26, 2018, 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 _____, 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.
