

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-803-374-080
	)	
	)	
Petitioner.	)	DECISION
	)	

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(Petitioner) protested the Notice of Deficiency Determination (Notice) issued on May 26, 2022, by the staff of the Sales/Fuels Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) proposing sales and use tax and interest for the period of January 2019, in the amount of \$7,088.92. The Notice adjusted the sales and use tax return Line 7 credit of \$10,564.18 taken by Petitioner, allowing \$4,171 of the credit and accounting for accrued interest of \$696 on the denied Line 7 credit.

Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission, after review of all information, hereby upholds the Notice for the reasons detailed below.

**Background and Audit Findings**

Petitioner, located in Idaho, is a retailer of and

- Petitioner originally registered their business with the Idaho Secretary of State in July of 2016 but did not obtain an Idaho dealers permit or a sales and use tax permit until 2017. Petitioner initially put their inventory on consignment with a licensed third party to sell. To do this, Petitioner was required to title the vehicles with the Idaho Department of Motor Vehicles (DMV). Once Petitioner obtained their dealers license and sellers permit, they began making sales of their own and eventually financed some of the sales.

Petitioner took a credit for bad debt on their January 2019 sales and use tax return using a Line 7 adjustment to total tax due. The return was flagged and sent to the Bureau for review. The Bureau obtained additional documentation from Petitioner to support the credit claimed on their sales and use tax return. The Bureau reviewed all transactions included in the credit and denied those transactions that did not qualify as bad debt.

Petitioner protested the results of the refund review by the Bureau. Petitioner's timely appeal did not address the bad debt that was denied by the Bureau but instead, discussed what Petitioner believed to be an inequity in law concerning statutes of limitation. Petitioner was required to pay use tax on vehicles they titled with the DMV because they were not licensed to sell motor vehicles in the state of Idaho, nor did they have a sellers permit as required by Idaho Code section 63-3620. The third-party vendor properly collected Idaho sales tax on the consignment sales of the motor vehicles for Petitioner. Petitioner did not apply for a credit of use tax paid after the vehicles were sold by third-party vendor. By the time they understood they could have received a credit for the use tax paid, it was past the three-year statute of limitations for refunds. Petitioner believed it to be a windfall for the state of Idaho to receive use tax from the registration of the vehicles and sales tax when the vehicle was sold by the third-party vendor.

An informal hearing was scheduled and held on September 27, 2022, after the Commission sent a hearing rights letter to Petitioner. Petitioner provided no additional information that would support the allowance of any additional credit.

### **Case Analysis and Relevant Tax Code**

Petitioner is appealing on a perceived imbalance in Idaho law concerning statutes of limitation. Idaho Code section 63-3626(b) limits the length of time a credit can be claimed on sales

and use tax overpaid to three (3) years. The use tax paid to the DMV by Petitioner was done in 2016 and a credit was never requested from the Commission.

The imbalance in law perceived by Petitioner comes from Idaho Code section 63-3633(c)

– Period of Limitation Upon Assessment and Collection. This code section states:

(c) In the case of taxes owed by a person who has failed to file a return as provided in section [63-3623](#), Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed.

Petitioner believes if the state of Idaho can look back seven (7) years for taxes due, Petitioner should be allowed to go back the same amount of time for taxes overpaid.

To analyze this, we must look at each piece of information separately to come to the correct answer. We first must look at the purchase and titling of the motor vehicles by Petitioner. At the time of purchase, Petitioner was not a registered retailer with the state of Idaho nor were they licensed with the state of Idaho as a motor vehicle dealer. Idaho Code section 63-3622 explains that all sales are subject to sales and use tax imposed by the chapter unless an exemption can be claimed. Petitioner couldn't claim an exemption at the time of registration. Idaho Code section 63-3619 – Imposition and Rate of The Sales Tax, explains that sales tax is an excise tax on each sale at retail. The excise tax is imposed on the transaction that occurs between the retailer and the purchaser. When we look at all these pieces together, we see that Petitioner properly paid Idaho use tax when they titled the vehicles with the DMV.

The next part is the consignment and subsequent retail sale of the motor vehicles by a licensed Idaho dealer and registered retailer. The 3<sup>rd</sup> party retailer charged, collected, and remitted Idaho sales tax on the retail sale of the motor vehicles for Petitioner. Again, we must look at Idaho Code sections 63-3619 and 63-3622. As an Idaho registered retailer, the 3<sup>rd</sup> party retailer properly

collected the sales tax from the purchaser. An exemption was not claimed at the time of sale by the purchaser so the transaction between the 3<sup>rd</sup> party retailer and the purchaser was taxable.

Petitioner was required to title the vehicles in their name to give the vehicles to the 3<sup>rd</sup> party dealer on consignment. Idaho Code section 49-1613(1)(j) explains that it is unlawful for the holder of a dealer's license to display for resale a motor vehicle they do not hold a title to or consignment agreement for. IDAPA 35.01.02.108.01 makes it clear that the only entities that may purchase motor vehicles for resale are licensed vehicle dealers, vehicle rental companies, and manufacturers of vehicles. Looking at these two situations along with the applicable Idaho laws, we can see in both instances, the tax paid on the transactions was done so correctly.

Petitioner did not have the ability to purchase vehicles ex-tax by law so therefore did not overpay use tax. The issue of the two statutes of limitation of three (3) years versus seven (7) does not hold merit for Petitioner. Petitioner would not have been able to obtain a credit for use tax paid on those vehicles in 2016.

### **Conclusion**

The Bureau reviewed the Line 7 adjustment on Petitioner's sales and use tax return and determined that they were entitled to \$4,171 of the \$10,564 credit claimed.

The Bureau added interest to the sales and use tax Line 7 adjustment denied. The Commission reviewed the addition and found it to be appropriate per Idaho Code section 63-3045. Petitioner made a payment of \$1,417.78 when they submitted their appeal. The new modified Notice amount still due from Petitioner, including updated interest, is \$5,747.43.

THEREFORE, the modified Notice of Refund Denial 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:

LINE 7 CREDIT TAKEN	LINE 7 CREDIT DENIED	INTEREST TO 7/28/22	PAYMENT MADE 07/28/22	INTEREST TO 01/04/23	TOTAL AMOUNT DUE
\$10,564.18	\$6,392.92	\$696.00	(\$1,417.78)	\$76.29	\$5,747.43

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2023,  
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:

Receipt No.

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