

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-413-376-000
)	0-344-942-592
)	
Petitioner,)	DECISION
_____)	

(Petitioner) protested two Notices of Deficiency Determination (Notices), issued by the Sales Tax Audit Bureau (Bureau). The Notices cover two different audit periods (Audit Periods). The first notice, issued on July 20, 2018, in the total amount of \$37,117.00, was for the period June 1, 2015 through December 31, 2015 (Audit Period 1). The second notice, issued January 18, 2019, in the total amount of \$212,314.00, was for the period from January 1, 2016 through May 31, 2018 (Audit Period 2). Both Notices were modified by the Bureau after additional information was received from Petitioner. Based on the reasons stated below, the Idaho State Tax Commission (Commission) upholds the Bureau's modified Notices.

Background

Petitioner is a used car dealership operating in Idaho. The Bureau contacted Petitioner to audit the sales and use tax remitted to the Commission during the Audit Periods. The Bureau requested and received a copy of the sales journal for the Audit Periods. The Bureau calculated the difference between the monthly amount of sales tax reported to the Commission versus the total amount of sales tax charged in their sales journal and determined that the sales tax collected had been underreported to the Commission.

The Bureau reviewed Petitioner's nontaxed sales in the sales journal. These are the sales where no sales tax was collected at the time of purchase. Any nontaxed sale that did not qualify

for an exemption, or was not properly accounted for, was included in the totals on the Notices. The Bureau also reviewed Petitioner's check registers to identify business expenses.

After the Notices were issued, Petitioner provided additional information to the Bureau in which the Bureau could verify that tax was paid to the vendor for certain transactions. The Bureau adjusted the Notices with this additional information.

Petitioner protested the Notices arguing the amounts determined by the Bureau did not reflect information they still needed to provide. Petitioner argued that the Notices should be reduced regarding their rescinded sale transactions (Rescinded Sales), where a sale of a vehicle would take place but soon thereafter need to be cancelled. The Bureau reviewed additional information supplied by Petitioner and deducted the valid Rescinded Sales which could be verified.

Petitioner did not withdraw their protest once the Notices were modified, and the Bureau transferred the case to the Commission's Appeals Unit (Appeals). Petitioner provided additional information to the Tax Appeals Specialist and scheduled an informal hearing. During the informal hearing, Petitioner explained the deficiency was based on their Rescinded Sales in which they were internally accounting for a credit of sales tax on past Rescinded Sales that they did not previously request a refund for. The proper method to calculate the credit allotted for a used car dealer was discussed. Petitioner explained that they no longer account for Rescinded Sales in this manner. Petitioner expressed their understanding of the calculation and explained their measures in place to not repeat this same issue.

Relevant Tax Code and Analysis

A. Sales Tax Must Be Remitted Once Collected.

Idaho Code section 63-3619 imposes a sales tax on all retail sales in Idaho unless an exemption applies. The sales tax is imposed on consumers, to be collected by a retailer and the retailer's responsible for remitting the tax to the State. Idaho Code section 63-3623 and 63-3627(a).

The Bureau identified a difference between the monthly amount of sales tax reported to the Commission versus the total amount of sales tax charged in their sales journal and therefore the Bureau found that the sales tax collected had been underreported to the Commission. This underreporting mainly was due to Petitioner's accounting regarding their Rescinded Sales.

B. Petitioner Improperly Accounted For Sales Tax Regarding Their Rescinded Sales By Giving Themselves A Credit For Past Rescinded Sales.

IDAPA 35.01.02.045.01 defines a Rescinded Sale as:

A transaction in which the seller and buyer place each other in the same positions they were in prior to entering into any taxable transaction; and a transaction which meets the rules of the Uniform Commercial Code for revoking acceptance in whole or in part. See Section 28-2-608, Idaho Code.

Petitioner's Rescinded Sales took place when a customer would return a car, previously purchased, and financed by a third party, to Petitioner. When this occurred, Petitioner would refund the money received from the sale back to the third party finance company. Petitioner would then later calculate a credit against all of their taxable sales for the corresponding month to the Commission but did not report this information on their corresponding sales tax return.

IDAPA 35.01.02.063.03(a) sets forth the proper manner in which to claim a credit on a Rescinded Sale for a secured sales transaction and states that, "If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit sale." IDAPA 35.01.02.063.02 sets forth that for unsecured credit sales:

- a. When a seller cannot collect accounts receivable arising from an unsecured credit sale of tangible personal property subject to sales tax, he can make an adjustment on his sales tax return or apply for a refund of taxes according to this rule.
- b. The adjustment or refund may be claimed on the sales tax return for the month in which the bad debt adjustment is made on the books and records of the taxpayer. The tax for which the credit or refund is sought is included in the amount financed and charged off as a bad debt for income tax purposes.

Because Petitioner failed to properly account for the sales tax that they credited on their sales tax return for Rescinded Sales and internally accounted for the credit rather than requesting a refund from the Commission, this practice did not accurately document the credit Petitioner realized, nor did it properly account for the credit for the specific sale that Petitioner was attributing the credit to. The Bureau did give credit to Petitioner where it could trace the sale to the credit and did take into account the amount of sales tax paid, however, overall, Petitioner's books reflected a shortfall of tax paid. Thus, the Notices reflected that shortfall.

C. Petitioner Has The Responsibility To Maintain Accurate Records To Verify Exempt Purchases.

Idaho Code Section 63-3621 imposes use tax on all tangible property used, stored, or otherwise consumed within Idaho unless an exemption applies. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho. If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state. Further, IDAPA 35.01.02.128.02, sets forth that the seller has the burden of proving that a sale is not taxable.

The Bureau reviewed Petitioner's nontaxed sales in the sales journal. These are the sales where no sales tax was collected at the time of purchase. The Bureau also reviewed Petitioner's check registers to identify business expenses. Any nontaxed sale that did not qualify for an exemption, or was not properly accounted for, was included in the totals on the Notices.

Petitioner was also able to provide purchase invoices applicable towards the purchases identified from the check register by the Bureau. The Bureau identified the purchases where tax was paid to the vendor and adjusted the Notices in favor of Petitioner. A large majority of the purchases were identified as car parts and accessories. Petitioner identified those purchases as a condition towards the sale, where the customer would return at a later date to have the component repaired or installed on their purchased car. However, there was no information which would tie the purchase made with its corresponding car sale, nor was there information in the car jackets regarding this issue. Therefore, Petitioner did not meet their burden in proving that these purchases were exempt.

Conclusion

Based on the information available, the Commission finds the modified Notices prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales and use tax liability for Audit Period 1 and Audit Period 2. The calculated amounts reflect the correct amount of sales tax due to the Commission and the use tax liability for nontaxed purchases used in the course of business. Interest is calculated through June 30, 2023 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Modified Notices of Deficiency Determination are hereby APPROVED, in accordance with the provisions of this decision, and are AFFIRMED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
6/1/2015-12/31/2015	\$18,049	\$902	\$5,101	\$24,052
1/1/2016-5/31/2018	111,682	5,584	25,761	143,027
			TOTAL	<u>\$167,079</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 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.
