

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 2-003-010-560
	)	
	)	
Petitioner.	)	DECISION
_____	)	

(Petitioner) protested the Notice of Deficiency Determination (Notice), dated May 26, 2022, issued by the Sales Tax Audit Bureau (Bureau). Based on the reasons stated below, the Idaho State Tax Commission (Commission) upholds the Notice.

**Background**

Petitioner is a used car dealer, in the business of selling and financing used vehicles. The Bureau contacted Petitioner to audit their sales and use tax remitted to the Commission for the period of September 1, 2018 through September 30, 2021 (Audit Period). The Bureau identified 491 car sales where the sales tax remitted to the Commission did not correspond with the applicable car sale.

The Bureau discovered 491 car sales with two issues:

1. The amount of sales tax calculated at the time of sale was not the amount remitted to the Commission.
2. Transactions in which Petitioner characterized as bad debt “Write Offs.” Write Offs in this case are when a customer does not make the loan payments necessary to purchase their financed vehicle. When a customer defaults on a loan, Petitioner repossesses the vehicle. When Petitioner repossesses a vehicle, they calculate a sales tax refund.

Under Idaho Sales Tax Administrative Rule 63.03, “[i]f collateral is repossessed and seasonably resold a public or private sale, then the seller is entitled to a bad debt adjustment.” IDAPA 35.01.02.63.03. After review of Petitioner’s accounts and records, it was found that Petitioner did not initially remit the correct sales tax at the time of the car sale. Further, if and when the sale became a Write Off, Petitioner did not correctly calculate the amount of sales tax refund.

In an effort to analyze the voluminous number of records to be reviewed, Petitioner and the Bureau agreed that a sample indicative of the sales that took place should be reviewed. Petitioner provided the following documents, per the Bureau’s request, for each car sale in the sample:

- A copy of the original sale documentation breaking out all items in the sale contract as well as financing information.
- A payment history for the buyer through the current date.
- Documentation showing how much the car was sold for after it was repossessed (e.g., if the vehicle was sold off the lot, the next sale contract, or a receipt from an auction house).
- If the vehicle was not repossessed, documentation explaining why it was not repossessed.
- Additional fees attributed to recovering the vehicle.

After analyzing Petitioner’s documents, the Bureau found that the amount of refund owed was less than the amount Petitioner claimed for bad debt. Therefore, the difference between the amount of refund calculated by Petitioner and the amount calculated by the Bureau was deemed taxable. The Bureau sent Petitioner a Notice based on this difference.

Petitioner protested the Notice stating that the code and rules cited in the audit do not apply in their business. Specifically, the method of calculating a refund does not take into consideration the extra charges associated with the repossession of a vehicle.

The Bureau acknowledged Petitioner’s protest and transferred the case to the Commission’s Appeals Unit (Appeals). Petitioner requested an informal hearing and during the hearing, Petitioner stated they take a financial risk when they finance a vehicle. Petitioner

explained that generally, the customers who purchase their vehicles do not qualify for conventional car loans and, consequently, Petitioner compensates for this risk by charging a higher interest rate.

Petitioner also reiterated their protest and explained that based on the Bureau's calculations, the same vehicle could be resold several times, which results in several sales transactions the Commission would receive sales tax on. Appeals explained that the sales tax is a transaction tax; therefore, each transaction, regardless of the number of times an item is sold, is considered to be taxable, unless an exemption applies.

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

Idaho Code section 63-3619 imposes a sales tax on all retail sales in Idaho unless an exemption applies. This tax is imposed on consumers to be collected by a retailer and remitted to the State. After the tax has been collected, Idaho Code section 63-3623 and 63-3627(a), state the responsibility of the retailer in remitting the collected tax from the consumer for each retail sale.

In general, sales tax is due and payable to the Commission on a monthly basis. See Idaho Code 63-3623. In this case, when Petitioner financed a vehicle, sales tax was due at the time of the sale. The tax is computed on the total sales price. Idaho Code section 63-3619 states in pertinent part:

- (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.

Furthermore, Idaho Sales and Use Tax Administrative Rule IDAPA 35.01.02.063.01 states, "Sales tax is collected on an accrual basis. The tax is owed to the state at the time of sale, regardless of when the payment is made by the customer." In the Petitioner's case, sales tax was charged to the customer on the full sales price of a vehicle, however, when Petitioner remitted sales tax to the Commission, Petitioner only remitted the amount of sales tax based on the monthly finance

payments a customer made to Petitioner. It should be noted, if an Idaho resident purchases a vehicle from an Idaho dealer, that dealer will provide documentation to the customer showing 6% sales tax was paid to Idaho, and in turn, this amount of tax should be remitted to Idaho. Basing the amount of sales tax on the monthly finance payment created an improper accounting for sales tax under Idaho Law.

IDAPA 35.01.02.117.4 provides that retailers are entitled to a refund of sales tax for bad debt. Instructions for calculating the applicable refund for bad debt is discussed in IDAPA 35.01.02.063. Petitioner did not take into account the nontaxable portions for the amounts financed while calculating their sales tax refunded, which had an overall effect of overstating the amount which should be refunded. IDAPA 35.01.02.063.05 states:

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.

The Commission reviewed the Bureau's computation of the credit claimed for the Write Offs and finds the calculation to be appropriate for a retailer selling previously owned vehicles. The calculation was offset by Petitioners miscalculation for the Write Offs.

Based on the information available, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales and use tax liability for September 1, 2018 through September 30, 2021.

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 Notice of Deficiency Determination 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:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$131,446	\$13,807	\$145,253

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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