

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

In the Matter of the Protest of )  
 )  
[REDACTED], ) DOCKET NO. 21667  
 )  
 ) DECISION  
Petitioner. )  
 )  
\_\_\_\_\_ )

On June 3, 2008, the Compliance Bureau of the State Tax Commission (Commission) timely issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer). The NODD asserted a responsible party penalty against the taxpayer for the unpaid withholding taxes of [Redacted] in the amount of \$800 for the periods November and December 2007. On June 20, 2008, the taxpayer timely protested the NODD. In support of his protest, the taxpayer provided several documents and a written argument. The Commission sent a letter to the taxpayer to find out if the taxpayer wanted an informal conference. The taxpayer did not respond to this request, and the Commission wrote again to the taxpayer informing him that a decision would be issued based on the record if he did not respond. He once again did not respond, so the Commission is now issuing a decision based on the documents and information in the file.

The business [Redacted] (LLC) did not file a return nor make payment for its November and December 2007 withholding taxes. Staff reviewed the information contained in the Commission’s files and found that the taxpayer was one of three individual members and owners of the LLC. Based on other information, staff also determined that the taxpayer had check signing authority for the LLC and that he was listed as an officer on filings with the Secretary of State. Staff also obtained a copy of a document entitled “First Amendment to the operating Agreement of [Redacted]”, which indicated that the taxpayer was selling his ownership interest

in the LLC to another member effective January 1, 2008. Based on this information, staff issued the NODD.

In support of his protest, the taxpayer states that he was not the person in charge of taxes for the company, and he also states that he was not paid any money from the company during 2007.

The relevant statute is Idaho Code § 63-3078, which provides:

Any person required to collect, truthfully account for and pay over any tax imposed by this title who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for or paid over. No penalty shall be imposed under this or other Idaho Code sections for any offense to which this section is applicable except and to the extent that such would be imposed when this section is interpreted in a manner similar to the interpretation given to section 6672(a) of the internal revenue code.

The plain language of the statute provides that it shall be interpreted in a manner similar to the interpretation given in section 6672(a) of the Internal Revenue Code, and accordingly, the federal court's application of this section is relevant to the determination of whether the taxpayer is a responsible party for the payment of the taxes owed by the LLC.

To be held responsible for the unpaid taxes on an entity such as an LLC, the individual must have significant authority in general management and fiscal decision making. *Bradshaw v. United States*, 83 F.3d 1175 (10<sup>th</sup> Cir. 1995). Indicia of responsibility within meaning of statute which imposes penalty on responsible person who willfully fails to pay federal withholding taxes include holding of corporate office, control over financial affairs, authority to disburse corporate funds, stock ownership, and ability to hire and fire employees. *Id.*

The term “responsible person” is broad and may include many individuals connected with a corporation, and more than one individual may be the responsible person for an employer. The Purdy Co. of Illinois v. United States, 814 F.2d 1183, 1188 (7th Cir.1987); Commonwealth Nat. Bank of Dallas v. United States, 665 F.2d 743, 757 (5th Cir.1982). Several factors may indicate that a party is a responsible person. The key element, however, is whether that person has the statutorily imposed duty to make the tax payments. This duty is considered in light of the person’s authority over an enterprise’s finances or general decision making. Ruth v. United States, 823 F.2d 1091, 1094 (7th Cir.1987); Godfrey, 748 F.2d at 1575. This authority is generally found in high corporate officials charged with general control over corporate business affairs who participate in decisions concerning payment of creditors and disbursement of funds. Monday v. United States, 421 F.2d 1210 (7th Cir.), *cert. denied*, 400 U.S. 821, 91 S.Ct. 38, 27 L.Ed.2d 48 (1970). However, a party cannot be presumed to be a responsible person merely from titular authority. Most corporate officers probably do have the authority to make disbursements, particularly in a closely held corporation. The focus must instead be on substance rather than form. Godfrey, 748 F.2d at 1576. The substance of the circumstances must be such that the officer exercises and uses his authority over financial affairs or general management, or is under a duty to do so, before that officer can be deemed to be a responsible person. See Pototzky v. United States, 8 Cl.Ct. 308 (1985) (citing Godfrey v. United States, 748 F.2d 1568 (Fed.Cir.1984)).

Here, the record is limited. The taxpayer was an owner during the relevant time period, and he had check signing authority. Based on this limited evidence, it does appear that the taxpayer had authority to act on behalf of the LLC. The NODD is presumed to be correct, and the burden is on the taxpayer to prove he is not responsible for the taxes claimed due. *Riverside*

*Development Company v. Vandenberg*, 137 Idaho 382, 48 P.3d 1271 (2002). Here, the taxpayer has not met his burden. For these reasons, the Notice of Deficiency will be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated June 3, 2008, is hereby APPROVED, AFFIRMED, AND MADE FINAL .

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the penalty of \$800 for the periods of November and December 2007.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, 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.

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