

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 13590 |
| [REDACTED], |) | |
| |) | DECISION |
| Petitioner. |) | |
| _____ |) | |

On February 26, 1999, the Tax Discovery Bureau of the Idaho State Tax Commission (Bureau) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for tax years 1994 through 1997 in the total amount of \$527,143.

On April 29, 1999, the taxpayer filed its 1994 corporate income tax return and a timely protest to the determination of income tax due. The taxpayer did not request a hearing. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

During all of the years at issue, the taxpayer conducted its business operations from a building located in Idaho that housed an inventory of used automobiles. The company applied for and was issued a sales/use tax permit and a withholding permit with the Tax Commission. Throughout the years addressed in the notice, the company reported and paid over on a monthly basis the withholding withheld for the employees' gross pay and the sales taxes collected on sales. Yet, no corporate income tax returns were filed with the Internal Revenue Service or the Tax Commission.

Idaho Code § 63-3045 (1)(a) states:

Notice of redetermination or deficiency -- Interest.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing

proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

Because the taxpayer had not filed Idaho income tax returns, the Bureau issued a deficiency determination based on Tax Commission records. The taxpayer's president responded to the notice by sending the taxpayer's return for 1994, a letter of protest addressing the other years, and a promise to prepare and file the other missing returns.

The Bureau made the initial contact with the taxpayer on July 15, 1997. Between that time and the transfer of the file to the Legal/Tax Policy Division for administrative review of the appeal, the Bureau documented at least 26 contacts with the taxpayer's president attempting to secure the filing of the taxpayer's income tax returns. The efforts accomplished only broken promises and numerous delays. No one responded to the letter from the Tax Appeals Specialist that advised the taxpayer of its appeal rights.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Commission, 110 Idaho 572 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Albertsons, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The 1994 Idaho corporate income tax return the taxpayer submitted on April 29, 1999 will be accepted as filed subject to review pursuant to Idaho Code § 63-3038(a). The loss reflected in the 1994 return is carried forward to the 1995 tax year reducing the income and resulting tax due for 1995. No evidence has been furnished to the Tax Commission that would suggest the deficiency determination relating to 1996 and 1997 (calculated using the information contained in the Idaho

withholding and sale/use tax returns submitted by the taxpayer) is incorrect.

WHEREFORE, the Notice of Deficiency Determination dated February 26, 1999, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|----------------|------------------|-------------------------|
| 1994 | \$ 0 | \$ 10 | \$ 0 | \$ 10 |
| 1995 | 64,764 | 16,191 | 25,919 | 106,874 |
| 1996 | 76,642 | 19,161 | 24,319 | 120,122 |
| 1997 | 98,884 | 123,605 | 22,763 | <u>245,252</u> |
| | | | TOTAL DUE | <u>\$472,258</u> |

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 included with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, 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. [Redacted]
[REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1