

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14799
)	
[REDACTED],)	DECISION
)	
Petitioner(s).)	
_____)	

On May 5, 2000, the staff of the Field Services Bureau of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing the assignment of sales taxes, penalties, and interest in the amount of \$153,487.51 for the period of November 1992 through May 1999, to him as an officer of [Redacted], a corporation doing business in Idaho. The Tax Commission, having reviewed the entire file and being fully advised thereof, hereby issues its decision.

Records retained by the Tax Commission show the taxpayer signed an application for an Idaho employee-withholding permit for [Redacted] on February 4, 1992. The company was shown as a payroll clearing company whose main purpose was "Promotions and professional fund raising for [Redacted]." In addition, the records show the taxpayer signed checks on a monthly basis made payable to the Idaho State Tax Commission to submit the withholding that had been retained from the corporation's employees. No other tax permits were found in the Tax Commission records. The company ceased doing business in Idaho in May 1999.

Because the fund raising activities included taxable admissions, the audit staff determined the company was required to collect and submit sales/use tax on each ticket sold. However, the company did not apply for a sales/use tax permit and did not remit sales/use taxes. The Tax Commission determined the company was responsible for sales/use taxes, penalties, and interest in the amount \$153,487.50 for the period of November 1992 through May 1999.

Idaho Code § 63-3627 states:

63-3627. Responsibility for taxes -- Corporations, partnerships and limited liability companies. (a) Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any corporation, partnership or limited liability company under this chapter on behalf of such corporation, partnership or limited liability as an officer, member or employee of such corporation, partnership or limited liability company, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this chapter 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 and paid over. No penalty shall be imposed under section 63-3046(b), Idaho Code, for any offense to which this subsection (b) is applicable.

The Tax Commission assessed the [Redacted] for sale/use taxes relating to the fund raising activities the company held in Idaho during the period at issue. Because the [Redacted] ceased doing business in Idaho and left the state without paying the sales/use taxes due, the liability was assigned to the taxpayer as well as the company. The taxpayer's former wife protested the assignment on behalf of the taxpayer. Although several letters have been sent directly to the taxpayer, he has not responded.

The sale of admission tickets within the state of Idaho is a taxable event, which has not been disputed by the taxpayer. The sales/use taxes, penalties, and interest amounts shown in the deficiency notice addressed to the taxpayer were determined based on the [Redacted] sales of admission tickets for events occurring in Idaho. The [Redacted] did not remit the sales/use taxes to the Tax Commission.

During the period in question, the taxpayer was the president of the [Redacted]. The taxpayer was physically present in Idaho at various times during the years at issue. As director

of company operations in Idaho, the taxpayer had a duty to "account for and pay over any tax which is imposed upon or required to be collected" by the [Redacted].

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Comm'n, 110 Idaho 572 (Ct. App. 1986). Having presented no further information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Albertsons, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

Therefore, in light of the information contained in the file and the applicable law, the Tax Commission finds the deficiency notice is appropriate.

WHEREFORE, the Notice of Deficiency Determination dated May 5, 2000, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following sales taxes, penalties, and interest for the period of November 1992 through May 1999:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$99,722	\$24,940	\$28,826	\$153,488

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 with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2001, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED][REDACTED]

Receipt No.: [Redacted]
