

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

In the Matter of the Petition for	)	
Redetermination of	)	DOCKET NO. 15529
	)	
[Redacted],	)	DECISION
	)	
Petitioners.	)	
_____	)	

On January 23, 2001, the Compliance Section of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted], individually and as a responsible party of [Redacted], and a Notice of Deficiency to [Redacted], individually and as a responsible party of [Redacted]. The notices proposed a responsible person penalty in the amount of \$674.14, for unpaid withholding taxes owed by [Redacted]. for the periods March, June and December of 2000 and for \$17,511.27 for unpaid sales taxes owed by [Redacted] for the periods December 1999 through April 2000, and June 2000 through December 2000. Both [Redacted] and [Redacted] timely protested and requested a redetermination. This protest and redetermination request was undated but was received by the Compliance Section on March 18, 2001. The Commission sent several letters to [Redacted] and [Redacted] requesting they arrange for an informal conference or they provide further documentation. Finally, the Commission requested the parties to contact the Commission by June 28, 2001, or a decision would be issued based on the record in the file. [Redacted] did notify the Commission by telephone that he would send a letter, and finally did. In his letter he requested an informal conference and one was scheduled for September 13, 2001. A confirming letter was sent on July 19, 2001. However, [Redacted] did not attend the informal conference. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

[Redacted] filed withholding tax returns and sales tax returns but did not make payments. Accordingly, the Compliance Division investigated the business to identify the responsible parties of the business so liability could be asserted pursuant to Idaho Code §§ 63-3078 and 63-3627. Based on this investigation, the Compliance Division determined [Redacted] and [Redacted] were responsible parties.

[Redacted] is the owner of the stock and president of the business. In her protest letter, she admitted she is liable but said she had no money to pay the liability. She offered no facts which would support her contention that she is destitute.

[Redacted] signed tax returns and checks for the business. He appeared in bankruptcy court proceedings as a representative of the business. For example, at the creditors meeting, he appeared and testified under oath as a representative of the business. He worked on a day-to-day basis and appeared to be the manager. In his protest letter, he only provided a general denial of responsibility and said he was an employee. However, simply denying responsibility when there is overwhelming evidence that [Redacted] signed tax returns and checks, exercised management authority, and appeared in bankruptcy proceedings as a representative of the business is insufficient to overcome the presumption of the correctness of the Notice of Deficiency Determination. See Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984) (a determination of the State Tax Commission is presumed to be correct); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986) (a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous).

Accordingly, the Notices of Deficiency Determination will be upheld.

WHEREFORE, the Notices of Deficiency Determination dated January 23, 2001, are hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following sales tax, penalty, and interest for the periods December 1999 through April 2000, and June 2000 through December 2000 and the following penalty for withholding for the periods March, June and December of 2000:

	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Sales Tax	\$14,201.58	\$2,578.24	\$1,506.11	\$18,285.93
Withholding Penalty		674.14		<u>674.14</u>
Total Due				<u>\$18,960.07</u>

Interest is calculated through October 31, 2001 and will accrue at the rate of \$3.11 per day until paid. In addition, the denial of the taxpayers' claim for refund is AFFIRMED.

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

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2001.

IDAHO STATE TAX COMMISSION

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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]	[Redacted]	Receipt No.
[Redacted]			
[REDACTED]	[REDACTED]		

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ADMINISTRATIVE ASSISTANT 1