

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 15553
[Redacted], Individually and as a)
responsible person of [Redacted]) DECISION
)
Petitioner.)
_____)

On January 18, 2001, the Compliance Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting a responsible party penalty for the unpaid sales taxes and withholding taxes of a corporation for which the Bureau alleged the taxpayer was responsible. The penalty is asserted for unpaid sales taxes, penalty and interest in the amount of \$34,806 for the periods June 1999, September 1999, November 1999, December 1999, January 2000, April 2000, May 2000, September 2000, October 2000, and November 2000, and for unpaid withholding taxes in the amount of \$11,500 for the periods ending March 1999, June 1999, December 1999, March 2000, June 2000, and September 2000. On March 22, 2001, the taxpayer filed a timely protest and petition for redetermination with the State Tax Commission. The taxpayer did not request an informal conference. The Tax Commission, having reviewed the file, hereby issues its decision.

The underlying corporation did not file sales and withholding tax returns for the periods subject to the Notice of Deficiency. The Compliance Bureau estimated the tax liabilities and issued a Notice of Deficiency to the taxpayer, who is listed as the President of the corporation. In her protest letter, the taxpayer does not argue that she is not a responsible party of the corporation. Instead, she contends the estimates used by the Compliance Bureau are inaccurate, and she further contends that most of the taxes have been paid. She provided actual figures for

sales and withholding taxes for the periods asserted due by the Bureau. She also states she can provide cancelled checks documenting payment.

The Commission has reviewed its records, and there is no evidence that the corporation paid any sales or withholding taxes for the periods in question. However, the Commission will accept the numbers provided by the taxpayer to be used to calculate her liability.

The Commission has written to the taxpayer on several occasions requesting that the taxpayer provide further information or schedule an informal conference to appear and present further documentation or argument in support of her position. The Commission first wrote to her on June 6, 2001 and requested she respond by July 6, 2001. The Commission followed up with another letter on July 24, 2001 requesting she respond within ten days or a decision would be issued on the record as it stands. The taxpayer has not responded to either letter.

A review of the file indicates the amount of the liability should be reduced to reflect the information provided by the taxpayer in her protest letter. However, there is no evidence that the corporation or the taxpayer made any payments. Other than the information provided in regard to the amount due for each of the periods, the taxpayer has provided the Tax Commission with no legal or factual information to establish that she is not a responsible party or that there have been any payments. As a result, the Tax Commission has no alternative but to uphold the deficiency notice as modified by the taxpayer's information. 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 Commission, 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).

WHEREFORE, the Notice of Deficiency Determination dated January 18, 2001, is hereby MODIFIED, and as MODIFIED, is APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following responsible party penalties:

| <u>TAX TYPE</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-----------------|-------------|----------------|-----------------|--------------------|
| Sales | \$24,151.71 | \$6,373.97 | \$2,896.35 | \$33,422.03 |
| Withholding | \$ 9,512.41 | 0.00 | 0.00 | <u>\$ 9,512.41</u> |
| Total Due | | | | <u>\$42,934.44</u> |

Interest is calculated through August 31, 2001, and will continue to accrue on he unpaid sales tax amount at the rate set forth in Idaho Code § 63-3045(6) until paid.

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

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 # [Redacted]
