

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16498
[REDACTED])	
Petitioner.)	DECISION
)	
)	

On January 30, 2002, the Compliance Section of the State Tax Commission issued a Notice of Deficiency Determination (NOD) to [Redacted] as a responsible officer of [Redacted] (taxpayer). The NOD asserted the taxpayer was responsible for the unpaid sales tax, and related penalty and interest for [Redacted] in the amount of \$7,390.49 for the periods August 1999, September, October, and November of 2001. On February 12, 2002, the taxpayer timely protested and requested a redetermination. The Commission acknowledged the protest on February 28, 2002. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

The deficiency determination is made up of two parts. The first is a managed audit of [Redacted] conducted by the Managed Audit staff of the State Tax Commission. The amount of sales tax due based on this audit is \$4,882.92. [Redacted] has not paid this deficiency. Accordingly, the Compliance staff has asserted this amount against the taxpayer as a responsible party. The second portion of the deficiency relates to unpaid sales tax for the months of September, October, and November of 2001. [Redacted] did not file returns for these months, so the Compliance staff estimated the monthly liability relying on previously filed returns of the business.

In his protest letter, the taxpayer simply stated he does not believe he is responsible because the amounts are made up, and he requested information supporting the amount claimed

due. The Compliance Staff sent him information relating to the deficiency showing how the amount was calculated. On April 24, 2002, the Commission sent the taxpayer a letter advising him of his right to a hearing and his right to submit additional documentation. The taxpayer did not respond to this letter. The Commission sent a follow-up letter on June 28, 2002, requesting a response within ten days or a final decision would be issued. The taxpayer did not respond to this letter.

Idaho Code § 63-3627 provides that, among other things, every person with the duty to account for or pay over taxes of a corporation is personally responsible for the payment of the tax, penalty, and interest of the corporation should the tax not be paid by the corporation. Here, the corporation did not pay over various sales tax. The taxpayer disagrees with the amounts asserted due because they are based on estimates. However, part of the deficiency was based on a Managed Audit conducted of the corporation. In that case, the audit staff determined the amount due and issued a Notice of Deficiency to the corporation. The corporation did not protest and the taxes became assessed. Accordingly, the corporation cannot now assert the amount claimed due is incorrect. *State Tax Commission v. Western Electronics Inc.*, 99 Idaho 226, 580 P.2d 72 (1978). The taxpayer never challenged that he is responsible under Idaho Code § 63-3627 but only challenged the amount due. There is sufficient information available to conclude that the taxpayer is responsible for the amount asserted due in the audit.

The balance of the amount claimed due is based on estimates prepared by the Compliance staff. [Redacted] did not file sales tax returns for this period. The Compliance staff then investigated the filing history of [Redacted] and arrived at an estimate based on prior filings. The taxpayer was given notice of this estimate and was asked to provide accurate information if he believed the estimate to be incorrect. The taxpayer did not respond so the Notice of

Deficiency was issued. After the notice was issued, the taxpayer was given additional opportunities to present facts to show the amounts asserted due in the notice are inaccurate. However, the taxpayer failed to respond. The Notice of Deficiency is presumed to be correct, and the burden is on the taxpayer to prove he is not responsible for the tax claimed due. *Riverside Development Co. v. Vandenberg*, 137 Idaho 382, 48 P.3d 1271 (2002).

WHEREFORE, the Notice of Deficiency Determination dated January 30, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for the periods August 1999 and September 1, 2001, through November 30, 2001:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$6,732.92	\$225.00	\$425.11	\$7,383.03

Interest is calculated through November 30, 2002, and will continue to accrue at \$.29 per day until paid or December 31, 2002. If the debt is not paid by January 1, 2003, interest will accrue at \$0.92 per day during the year 2003.

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 _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, 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]
