BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for Redetermination of	)	
	)	DOCKET NOS 17164
[REDACTED], individually and as a	)	and 17165
responsible person of [Redacted].,	)	
	)	DECISION
Petitioner.	)	
	)	[Redacted]

On January 17, 2003, the Compliance Section of the Idaho State Tax Commission issued Notices of Deficiency Determination to [Redacted], individually and as a responsible party of [Redacted], hereinafter taxpayer. One Notice proposed a responsible person penalty in the amount of $6,633.00, for unpaid income tax withholding owed by [Redacted] for the periods June 2001, September 2001 and December 2001. The other Notice proposed responsible party liability for unpaid sales and use taxes of [Redacted]. in the amount of $1,709.08 for the periods December 2001 and March 2002. The taxpayer timely protested and requested a redetermination. An informal conference was held on May 8, 2003. Additional information was submitted by the taxpayer and additional information relative to [Redacted] was provided. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

Idaho Code §§ 63-3078 and 63-3627 impose liability on individuals who are responsible for paying taxes owed by corporations and other entities and who fail to see that the taxes are paid. Idaho Code § 63-3078 provides:

> Any person required to collect, truthfully account for and pay over any tax imposed by this title 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 or paid over. No penalty shall be imposed under this or other Idaho Code sections for any offense

> to which this section is applicable except and to the extent that such would be imposed when this section is interpreted in a manner similar to the interpretation given to section 6672(a) of the internal revenue code.

Idaho Code § 63-3627(a) provides:

> Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of such taxpayer as an officer, member or employee of such taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

Here, [Redacted] filed sales tax returns for the periods ending December 2001 in the amount of $816.87 and March 2002 in the amount of $886.25. The corporation subsequently remitted $400.00 to be applied to the March 2002 tax return, leaving a balance of $486.25. [Redacted] filed income tax withholding returns for the periods ending June 2001 in the amount of $1,860.00, September 2001 in the amount of $2,637.00, and December 2001 in the amount of $2,136.00. The corporation did not make any payments on these obligations. The Compliance Section then began an investigation to determine the responsible parties of the corporation. The Section determined the taxpayer was a responsible party because she had check signing authority and was a corporate officer.

The taxpayer argued she was not a person responsible for the payment of taxes for the periods for which the Notices of Deficiency were issued. In support of her protest she provided several affidavits and corporate documents. This information showed that prior to January 23, 2002, an individual named [Redacted] acted as the Chief Executive Officer, President, Chairman of the Board and Chief Financial Officer. Though the taxpayer had check signing authority, she did not exercise it. Instead, all decisions to write checks were made by [Redacted] and [Redacted] wrote all checks for taxes. He was responsible for payment of the sales and use tax

owed by [Redacted], as well as for payment of income tax withholdings. He oversaw, managed, and assisted in conducting all accounting duties related to [Redacted]. On January 23, 2002, Mr. [Redacted] resigned from the company and, at that point, the taxpayer assumed the position of acting President. She then took over the responsibility to see that taxes were paid. In fact, she submitted a sales and use tax return on behalf of [Redacted] and she signed checks to the Commission for taxes. She diligently proceeded in her efforts and made every attempt to pay taxes as they became due. However, part of the March sales and use tax return was not paid. Though she may have acted responsibly in trying to get the taxes paid, the fact is they were not paid. Accordingly, she has liability for all unpaid taxes that came due after January 23, 2002.

WHEREFORE, the Notice of Deficiency Determination dated January 17, 2003, for unpaid income tax withholding for the periods June 2001, September 2001, and December 2001 is hereby CANCELLED.

The Notice of Deficiency Determination dated January 27, 2003, for unpaid sales and use taxes 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 sales and use tax, penalty, and interest for the period March 2002:

Tax	Penalty	Interest	Total
$486.25	$121.56	$50.00	$657.81

Interest is calculated through April 30, 2004 and will accrue at the rate of $0.07 per day 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 _____, 2004.

IDAHO STATE TAX COMMISSION

_____
COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2004, 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.

_____