

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 17452,
)	17453, and 17454
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On September 27, 2002, the Compliance Section of the State Tax Commission timely issued three Notices of Deficiency Determination to [Redacted] as a responsible officer of [Redacted] (taxpayer). The first Notice asserted a penalty against the taxpayer for the unpaid withholding tax for [Redacted] in the amount of \$5,336.00 for the periods June and September of 2001. The second Notice asserted the taxpayer was responsible for the unpaid travel and convention tax and related penalty and interest for [Redacted] in the amount of \$21,429.89 for the periods March 2000, May through September of 2000, and June through September of 2001. The third Notice asserted the taxpayer was responsible for the unpaid sales and use tax and related penalty and interest for [Redacted] in the amount of \$26,440.45 for the periods June through September of 2001. On November 29, 2002, the taxpayer timely protested all three Notices. The Compliance Staff maintained the files and tried to work out a resolution of the dispute. The attempt was not successful, and the file was forwarded to the Commission on June 30, 2003. The Commission tried to resolve the dispute with the taxpayer, but the parties were not able to reach an agreement. Finally, the Commission requested that the taxpayer schedule an informal conference. The taxpayer, through his legal representation, requested a telephonic settlement conference, which was held on June 22, 2004. At the conference the parties discussed settlement, and the taxpayer made an offer. The Commission later rejected the taxpayer's offer and made a counteroffer. That offer was rejected. The taxpayer's legal representative advised

the Commission that he would try to get one more offer to the Commission for the Commission's review. However, that offer was never submitted. The Commission attempted to contact the taxpayer's legal representative for purposes of determining whether the taxpayer wanted an informal conference, but the legal representative never responded. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

In his protest letter, the taxpayer claims he is not responsible. He requests that the Commission provide evidence of his responsibility. Additionally, he claims the LLC, which owes the taxes, was not properly given credit for taxes it did pay.

With respect to sales tax, 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 taxes, penalty and interest of the corporation should the taxes not be paid by the corporation. The statute provides:

(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 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.

(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.

Here, the corporation did not pay over various sales taxes. The travel and convention tax is imposed pursuant to Idaho Code § 67-4718. This statute gives the Commission the same authority to collect the travel and convention tax as it has to collect the sales tax. Accordingly,

responsible parties are liable for the payment of the travel and convention tax in the same manner as responsible parties are liable for the payment of the sales tax.

With respect to the withholding tax, Idaho Code § 63-3078 imposes a similar obligation on responsible parties. It 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.

The first issue is whether the taxpayer is responsible for the payment of the taxes of the LLC. On the original sales tax and withholding tax applications for permits, the taxpayer was identified as the person of authority for the LLC. On filings with the Secretary of State, he signed at least one annual report and was identified as a manager of the LLC. To be held responsible for the unpaid taxes on an entity such as an LLC, the individual must have significant authority in general management and fiscal decision making. *Bradshaw v. United States*, 83 F.3d 1175 (10th Cir. 1995). Here, the only evidence available to the Commission indicates that the taxpayer had authority to act on behalf of the LLC. The staff did its investigation and issued the Notice of Deficiency. The taxpayer was given the opportunity to challenge the Notice through the informal process and did not supply any contrary evidence. The Notice of Deficiency is presumed to be correct and the burden is on the taxpayer to prove he is not responsible for the taxes claimed due. *Riverside Development Company v. Vandenberg*, 137 Idaho 382, 48 P.3d 1271 (2002).

The taxpayer also asserted the amount claimed due is incorrect. The staff provided an accounting of the liability, and the Commission is unsure whether the taxpayer is satisfied with the accounting. However, the taxpayer has provided no evidence to show the amount is incorrect. The taxpayer was given an additional opportunity to present facts which would show the amounts asserted due in the notice are inaccurate. However, the taxpayer failed to respond. For these reasons, the Notices of Deficiency will be affirmed.

WHEREFORE, the Notices of Deficiency Determination dated September 27, 2002, are 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 June 1, 2001 through September 30, 2001 for sales, withholding, and travel and convention taxes, and the additional periods of March 2000, and May 1, 2000 through September of 2000:

	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Sales tax	\$19,964.56	\$4,923.75	\$4,387.82	\$29,276.13
Withholding tax		\$4,869.53		4,869.53
Travel & convention tax	\$15,525.06	\$3,660.83	\$2,679.19	<u>21,865.08</u>
		Total tax, penalty and interest		<u>\$56,010.74</u>

Interest is calculated through February 28, 2005, and will continue to accrue at \$5.83 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 _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, 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]
[Redacted]
[REDACTED]

Receipt No.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]