

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18636 & 18637
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On April 16, 2004, the Compliance Section of the Idaho State Tax Commission issued two Notices of Deficiency Determination to [Redacted], individually and as a responsible party of [Redacted], (hereinafter taxpayer). The first Notice proposed a responsible person penalty in the amount of \$1,161, for unpaid withholding tax owed by [Redacted] for the periods December 2003 and January and February 2004. The second Notice asserted the taxpayer was responsible for the unpaid sales and use tax of [Redacted], in the amount of \$15,156.72 for the periods November 2003, January 2004, and February 2004. On December 22, 2004, the Compliance Section issued two more Notices of Deficiency Determination to the taxpayer. The first proposed a responsible party penalty in the amount of \$2,700.00 for unpaid withholding taxes of [Redacted] for the periods March 2004 through November 2004. The second Notice proposed the taxpayer was responsible for the unpaid sales and use tax of [Redacted], in the amount of \$34,607.51 for the periods March 2004 through November 2004. The taxpayer timely protested and petitioned for redeterminations on June 18, 2004, and February 23, 2005. An informal conference was held on November 15, 2005. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

The taxpayer has not disputed the determination that he is a responsible party of [Redacted] [Redacted] Instead he raises two different arguments that would, if valid, reduce his liability. First, he contends that the amount asserted due in the deficiencies are overstated

because they are based on estimates. Second, he contends that the business, [Redacted] ceased business in April 2004 and thus there is no liability for any periods after 2004. Because he does not dispute that he is responsible, this decision will be limited to addressing the issues raised by the taxpayer. The business did not file sales or withholding tax returns for the periods in question. Therefore, the Compliance Staff reviewed the filing history of the business and estimated a liability and asserted this liability against the taxpayer pursuant to Idaho Code §§ 63-3078 and 63-3627. At the informal, the taxpayer's representative indicated there may be business records in the possession of a bankruptcy trustee that might be used to calculate the actual liability of the business and, therefore, the taxpayer as the responsible party. However, the representative was unable to produce this information, and the Commission is left only with a statement that the estimates used by the Compliance Staff overstate the actual liability. This statement is insufficient to overcome the presumption of the correctness of the Notice of Deficiency. 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).

The taxpayer also contends the deficiency amounts include periods when the business was not operating. In support of his position, the taxpayer provided evidence that [Redacted] filed a Chapter 7 bankruptcy petition on April 19, 2004, and no longer operated after that date. Accordingly, the Commission hereby removes from the deficiency determination the claim for any responsible party penalty after April 2004.

Accordingly, the Notice of Deficiency Determinations will be modified consistent with this Decision.

WHEREFORE, the Notices of Deficiency Determination dated April 16, 2004, and January 22, 2005, are hereby MODIFIED, and as MODIFIED are APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following sales tax, penalty, and interest for the periods identified:

<u>PERIOD</u>	<u>PENALTY</u>	<u>BALANCE</u>
31-Dec-03	327.00	327.00
31-Jan-04	300.00	300.00
29-Feb-04	300.00	300.00
31-Mar-04	300.00	300.00
30-Apr-04	<u>300.00</u>	<u>300.00</u>
TOTAL	TOTAL DUE	<u>\$1,527.00</u>

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>BALANCE</u>
31-Dec-03	159.62			159.62
31-Jan-04	5,000.00	1,250.00	541.08	6,791.08
29-Feb-04	2,500.00	625.00	284.46	3,409.46
31-Mar-04	2,500.00	625.00	297.20	3,422.20
30-Apr-04	<u>8,000.00</u>	<u>2,000.00</u>	<u>1,017.96</u>	<u>11,017.96</u>
TOTAL	<u>17,159.62</u>	<u>4,500.00</u>	<u>2,140.70</u>	<u>24,800.32</u>

Interest is calculated through January 31, 2006, and will accrue at the rate of \$3.10 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.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, 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]

Receipt No.