

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 22108
[Redacted]	)	
	)	DECISION
Petitioner.	)	
_____	)	

On February 6, 2009, the Compliance Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice asserted the taxpayer, as a successor to [Redacted], owed sales tax, penalty, and interest for the periods November and December 2008 in the amount of \$20,000. The taxpayer timely protested and requested a redetermination on April 7, 2009. An informal conference was held on November 9, 2009. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

Subsequent to the protest, the Compliance Division received additional information from [Redacted] which reduced the amount to \$6,859.15. The taxpayer purchased a business that had outstanding tax liens against it. Additionally, the business owed sales tax for the periods November and December 2008. At the time of purchase, the liability for those periods had been assessed, but a Notice of Lien had not been filed. The taxpayer was aware of the tax liens but made no inquiry of the Commission to determine if any additional liabilities might be owing. At closing, the taxes subject to the liens were paid out of the proceeds of the sale. However, the amounts owing for November and December 2008 were not paid.

Idaho Code § 63-3628 provides:

**63-3628. Successors' liability.** (a) If any vendor liable for any amount under this act sells out his business or stock of goods, the vendee shall make inquiry of the state tax commission and withhold from the purchase price any amount of tax that

may be due under this act until such time as the vendor produces a receipt stating that no amount is due.

(b) If the purchaser of a business or stock of goods fails to withhold from the purchase price as above required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price valued in money.

(c) The state tax commission shall, as soon as practicable after receiving written inquiry as to the amount due and no later than thirty (30) days after receipt of the inquiry or, if necessary, thirty (30) days from the date the vendor's records are made available for audit, but in any event no later than sixty (60) days after receiving the inquiry, issue a statement to the purchaser setting forth the amount of tax due by the vendor, if any. Failure of the state tax commission to issue such statement will release the purchaser from any obligation to withhold from the purchase price as above required.

The statute imposes a duty on the purchaser of a business to make written inquiry of the State Tax Commission to find out the sales tax liability of the seller. The purchaser is then required to withhold from the purchase price the amount of the liability and pay to the Commission. If the purchaser does not make written inquiry and then fails to withhold the tax amount from the purchase price, the purchaser is then liable for the unpaid tax.

Here, the taxpayer's representative contended he made verbal inquiry. He argues that he made several phone calls to the Commission but was not given any response other than that all information about the seller is confidential information which could not be disclosed. He did involve a title company that assisted him with identifying and paying the recorded liens. At closing, the liens were satisfied and released, but there is no evidence, nor does the taxpayer contend, that written inquiry was made to the Commission as required by the statute. Presumably, if the written inquiry had been made, the Commission would have notified the taxpayer of the November and December 2008 liability. The taxpayer's representative contends that he tried to make sure all state tax debts were paid and if someone would have told him about the November and December 2008 liability before closing, they would have been paid. The

Compliance Officer working the file for the Commission indicates that the taxpayer was sent a letter explaining the need to make a written request to determine whether the seller owed any additional sales or use taxes. Since the taxpayer did not make the written request, the statute allows for a successor liability claim.

THEREFORE, the Notice of Deficiency Determination dated February 6, 2009 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 tax, penalty and interest:

<u>TAX TYPE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
SALES	\$6,859.15	\$0	\$0	\$6,859.15

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 \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, 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 No.