

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22439
)
)
Petitioner.) DECISION
)
_____)

On September 4, 2009, the Compliance section (Compliance) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), individually and as a responsible party of [Redacted] (taxpayer) for unpaid sales taxes, penalties, and interest owed by [Redacted] for the periods February through September 2007 and May and June 2009 in the amount of \$22,418.42. On October 22, 2009, the compliance section issued another Notice of Deficiency Determination to the taxpayer for unpaid sales taxes, penalties, and interest owed by [Redacted] for the periods of July and August 2009 in the amount of \$1,184.96.

On October 30, 2009, the taxpayer timely protested and requested a redetermination of the first Notice of Deficiency Determination. The Tax Commission treated the protest letter as a valid protest of the second Notice of Deficiency Determination as well. The Commission sent a hearing rights letter on December 16, 2009, and a follow-up letter on February 4, 2010. The February 4 letter advised the taxpayer that if he did not contact the Commission by February 14, a decision would be issued on the record as contained in the file.

An accountant representing the taxpayer contacted the Commission and wanted to file amended income tax returns and provide other information to show that the taxpayer was not a responsible party. However, no amended returns, information, or additional information was

received from the taxpayer or his accountant for the year 2007. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

[Redacted] did not pay its sales taxes for the periods identified in the Notices of Deficiency Determination and Compliance undertook efforts to collect the tax. The first person Compliance contacted to discuss the non-payments was the manager, the taxpayer's son. However, information came to light that the taxpayer was the owner of the business and that sales taxes were not being paid. The taxpayer filed a 2007 income tax return showing himself as the owner of [Redacted]. The Schedule C attached to the taxpayers return showed an \$82,000 loss. He was listed as a borrower on a UCC-1 filed with the Secretary of State where the proceeds of the loan were used to purchase items for the [Redacted]. Compliance attempted to contact the taxpayer to get additional information, but they were unsuccessful. Based on this information, Compliance asserted a Notice of Deficiency Determination pursuant to Idaho Code § 63-3627. In his protest, the taxpayer argued that he loaned money to his son, who was the real owner of the business. However, neither the taxpayer nor his accountant could explain why the Schedule C was included on his tax return. The accountant stated that the taxpayer needed to file an amended income tax return for 2007. However, an amended return has yet to be filed. The return information simply carries more weight than the protest letter and oral statements of the accountant. Additionally, the UCC-1 supports the information in the tax return. Staff relied on information that supported the imposition of the Notice of Deficiency Determination, and the taxpayer has only offered a statement in his protest letter that the income tax return is incorrect. This statement is insufficient to overcome the presumption that the Notice of Deficiency Determination is correct. See Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984), 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.

Accordingly, the Notices of Deficiency Determination will be upheld.

WHEREFORE, the Notices of Deficiency Determination dated September 4, 2009, and October 22, 2009, are hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following sales taxes, penalties, and interest for the periods February through September 2007 and May through August 2009.

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$17,467.50	\$3,222.11	\$2,278.81	\$22,664.39

Interest is calculated through June 26, 2010, and will accrue at the rate of \$2.37 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 _____ 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.
