

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

In the Matter of the Protest of )  
 )  
[Redacted], ) DOCKET NO. 23260  
 )  
 )  
Petitioner. ) DECISION  
 )  
\_\_\_\_\_ )

On April 21, 2010, the Field Services Bureau of the Idaho State Tax Commission (Commission) issued two Notices of Deficiency Determination (Notice) to [Redacted] as a responsible person of [Redacted] (taxpayer). The first Notice asserted the taxpayer was responsible for the unpaid sales taxes and related penalty and interest for [Redacted] for the period January 2010 in the amount of \$2,104.84. The second Notice proposed the taxpayer was responsible for the unpaid income tax withholding penalty for [Redacted] for the period January 2010 in the amount of \$8,200. On June 22, 2010, the taxpayer timely protested and requested a redetermination. An informal conference was held on June 14, 2011. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

The taxpayer raised very few issues. He stated that he was given the right to protest and, since the Notices provided no explanation for the reasons he was found to be responsible, he wanted to see the evidence the Field Services Bureau relied upon to make its determination. He also stated that the corporation, [Redacted] ([Redacted]), did not collect and remit sales tax, but it did remit use tax. Further, for the period of January 2010, [Redacted] did not file a return, so he did not know how the amount claimed due was calculated.

Idaho Code § 63-3078 imposes personal liability on every individual with the duty to account for over taxes which are imposed upon or required to be collected by a taxpayer that the

individual is either an officer, member, or employee of the taxpayer. Essentially, the statute imposes personal liability on certain officers, employees, or members of an entity when the entity does not pay its sales or use taxes. The evidence in the file establishes that the taxpayer was identified on several documents as an owner or officer of [Redacted]. [Redacted] filed bankruptcy in 2010, and the taxpayer signed the petition as the President. He was identified in the schedules as a 50 percent owner of [Redacted], with his spouse owning the other 50 percent. Documents on file with the Idaho Secretary of State identified the taxpayer as the President of [Redacted] and the taxpayer signed tax returns as the President of [Redacted]. The taxpayer had check signing authority for [Redacted] and did in fact sign checks for the payment of taxes of [Redacted]. Based on this evidence, the taxpayer did not dispute that he is a responsible party.

With respect to the income tax withholding penalty, the Field Services Bureau calculated the amount due by subtracting the amount paid by [Redacted] for the year 2009 from the amount reported as withheld on the employee W-2s for [Redacted]. The taxpayer did not have any evidence to refute this calculation. There is sufficient information to support the Notice for the income tax withholding.

With respect to the sales tax penalty and interest Notice, the Commission has reviewed the sales and use tax filings of [Redacted]. [Redacted] historically did not report sales tax but instead reported use tax. The taxpayer stated that [Redacted] did not have any sales tax for January 2010, but might have owed use tax. The Field Services Bureau, based on the historical filing pattern and the taxpayer's representations, agreed to withdraw the Notice for unpaid sales taxes.

There is sufficient information available to conclude that the taxpayer is responsible for the amount asserted due in the income tax withholding deficiency. The Notice 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).

THEREFORE, the Notice of Deficiency Determination dated April 21, 2010, for unpaid income tax withholding penalties is hereby APPROVED, AFFIRMED, and MADE FINAL, and the Notice of Deficiency Determination dated April 21, 2010, for unpaid sales taxes is hereby withdrawn.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the income tax withholding penalties, for the period January 2010 in the amount of \$8,200.

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 \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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.  
  
\_\_\_\_\_