

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23977
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On March 17, 2010, the Compliance Bureau of the State Tax Commission timely issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer). The Notice asserted the taxpayer was responsible for the unpaid sales taxes and related penalty and interest for the [Redacted] in the amount of \$1,507.04 for the periods November and December 2008 and May through August 2009; unpaid withholding taxes for the period November 2008 in the amount of \$526; and unpaid travel and convention tax and interest for the periods December 2008 and September 2009 in the amount of \$320.53. On May 17, 2010, the taxpayer timely protested and requested a redetermination. However, despite given the opportunity, the taxpayer did not request a hearing. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

[Redacted] [Redacted] did not pay the various taxes identified in the Notice issued to the taxpayer. The business was then closed down, and because of the unpaid tax obligation, the Compliance Bureau looked to the responsible party or parties of [Redacted]. The taxpayer signed checks on behalf of [Redacted] to pay taxes. For years 2008 and 2009, the annual report of [Redacted] filed with the Secretary of State listed the taxpayer as a member. However, in the 2005 articles of organization filed with the Secretary of State, the managers of [Redacted]. The taxpayer is a member of [Redacted]. Additionally, [Redacted], the other person identified as a member on the annual reports of [Redacted], stated that the taxpayer was the manager of the

business. The taxpayer represented [Redacted] in discussions with Tax Commission staff over [Redacted] tax obligations. Based on these facts, the Compliance Bureau determined the taxpayer was a responsible party within the meaning of Idaho Code §§ 63-3078, 63-3627, and 67-4718.

In his protest letter, the taxpayer conceded he is a member of the [Redacted], and raised only issues that relate to Idaho Code § 30-6-304(1). He contends this statute bars the imposition of personal liability for members and managers of the limited liabilities companies. This statute provides:

Liability of members and managers.—(1) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

- (a) Are solely the debts, obligations or other liabilities of the company; and
- (b) Do not become the debts, obligations or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

Based on this statute the taxpayer contends he cannot be held responsible for the unpaid taxes of the limited liability company.

The taxpayer's reading of the statute is incorrect. The statute simply provides that a debt of the limited liability company does not become a debt of the manager or member simply by the fact of the person's position. The comment to the statute specifically provides that this provision of the statute is irrelevant to claims against a manager or member based on the manager or member's own conduct.

The three tax statutes relied on by staff, Idaho Code §§ 63-3078, 63-3627, and 67-4718, impose personal liability on the person that has the duty to account for or pay over taxes of a limited liability company should the taxes not be paid by the limited liability company. These

statutes create a duty on a person separate and apart from the role of manager or member. It is the responsible person's conduct - the failure to pay taxes - that gives rise to the liability.

Here, the evidence establishes that the limited liability company did not pay various taxes and that the taxpayer had the responsibility to pay. Thus, the staff was correct in imposing liability on the taxpayer.

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 dated March 17, 2010, is 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 November 2008 December 2008, May 2009, June 2009, July 2009, and August 2009, and the following withholding tax for November 2008, and the following travel and convention tax and interest for December 2008 and September 2009:

<u>TYPE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Sales	\$1,354	\$2	\$151	\$1,526
Withholding	526	0	0	526
Travel & Convention	294	0	30	324
			TOTAL DUE	<u>\$2,376</u>

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.
