

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24643
[Redacted],)	
)	
Petitioner.)	DECISION
)	
)	
_____)	

On September 29, 2011, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted], Individually, and [Redacted] (collectively, the taxpayer, unless noted otherwise), proposing sales tax, use tax, penalty, and interest for the period January 1, 2008, through December 31, 2010, in the total amount of \$17,415.

On November 30, 2011, the taxpayer filed a timely appeal and petition for redetermination of the Notice stating that it disagreed with the findings. At the taxpayer's request, the Commission held an informal hearing on May 8, 2012. For the reasons that follow, the Commission upholds the audit findings.

Background and Applicable Tax Law

The taxpayer, a limited liability company (LLC) with a single member, an individual, is a wholesaler and retailer of [Redacted]. Some of the product is sold from [Redacted] rented from the taxpayer by individuals on a daily basis for the purpose of making retail sales. The majority of the liability in this audit resulted from uncollected sales tax on retail sales. In Idaho, a tax is imposed on the sale and rental of tangible personal property unless an exemption applies (Idaho Code § 63-3612(1) and (2)(h)). Exempt sales must be documented by valid certificates which the purchaser fills out and provides to the seller for retention (Idaho Code § 63-3621(e)).

The auditor determined that the taxpayer made retail sales of inventory without collecting tax or certificates from the buyer documenting an exemption. Further, the taxpayer rented [Redacted] for which no tax exemption applied.

A minimal liability was found with respect to the purchase of a company asset for which no tax was paid. In Idaho, if sales tax cannot or is not paid to the vendor, the buyer owes a use tax to the state. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621).

An examination of the taxpayer's records, an informal hearing, and follow-up correspondence resulted in an agreed-upon amount subject to tax. The taxpayer communicated an inability to pay the liability immediately. The Commission agreed, pending the result of a review of the taxpayer's financial circumstances, to enter into a payment plan. Subsequently, the taxpayer stated that it would do so only under the condition that there be no attempt to collect the amount due from the LLC's sole member, an individual.

The Commission will not comply with this request, which necessitates this decision naming both the LLC and the individual as liable. It is the practice of the Commission to attempt collection from the business entity. Failing that, it will resort to seeking the deficiency amount from a responsible party:

Responsibility for taxes. (a) Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of such taxpayer as an officer, member or employee of such taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this chapter who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall

be imposed under section 63 3046(b), Idaho Code, for any offense to which this subsection (b) is applicable (Idaho Code § 63-3627).

In the case at issue, the taxpayer objects to personal sales tax liability on the basis of an Idaho district court case, Idaho State Tax Commission vs. Olympic Prefabricators, Inc. (Case No. 92637. Memorandum Opinion and Order). In that decision, the court concluded Idaho Code § 63-3627(a) was not applicable to use tax. “Rather, the statute is applicable to collected sales taxes that the responsible person fails to ‘account for and pay over.’” (*Supra*, Page 1.) “Therefore, the court concludes that Idaho Code § 63-3627(a) is not applicable to establish personal liability upon corporate officers and employees for the failure to pay any use tax that may be due in this case.” (*Supra*, Page 3.)

Although the issue in the current case is almost entirely uncollected sales tax, the Commission does not believe that the judgment in Olympic Prefabricators, Inc. is applicable as the facts of each case are substantially different. The individual in the current case is a corporate officer, but he is also the sole member of the LLC and is the only person charged with the duty to collect and remit sales tax. He has not unwittingly taken on the responsibility to comply with the tax law as a paid employee. By establishing the LLC and assuming its sole management, he has assumed a risk that no salaried employee would innocently undertake.

Finally, the LLC in this case treated the LLC as a disregarded entity for state and [Redacted] income tax purposes. That is, the taxpayer as an individual reported the income from the business on his own tax returns. The taxpayer is not the unwitting individual who sought protection in Idaho State Tax Commission vs. Olympic Prefabricators, Inc.

The taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice is incorrect. As a result, the Commission will uphold the Notice. A determination of the State Tax Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of

Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984), and the burden is on the taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be an accurate representation of the LLC's and individual's sales and use tax liability for the period January 1, 2008, through December 31, 2010.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code sections 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through November 30, 2012, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice dated September 29, 2011, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the LLC and taxpayer pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$15,196	\$760	\$2,065	\$18,021

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 _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, 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.
