

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[Redacted],) DOCKET NO. 25620
)
)
Petitioners.) DECISION
)
_____)

[Redacted] (Petitioners) protested the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated March 18, 2013. The Notice of Deficiency Determination asserts responsible party liability against Petitioners for the sales tax deficiency of [Redacted] in the total amount of \$10,277.88.

The issue in this docket is whether the underlying sales tax liability is the type for which a responsible party can be held personally liable.

BACKGROUND FACTS

The facts of this case show that the underlying sales tax liability resulted from sales being treated as exempt from sales tax under the production exemption. ([Redacted] It appears possible that many of the sales did qualify for the production exemption, but at the time of the audit, [Redacted] was unable to provide valid certificates to substantiate many of the exempt sales. The taxpayer has a burden to provide the documentation to substantiate the production sales tax exemption. Whether or not the sales did qualify for the exemption at the time of the sales, the facts indicate that sales tax was not collected.

LAW AND ANALYSIS

Idaho Code § 63-3627(a) does not apply to uncollected tax. It only applies where someone fails to “account for and pay over” taxes that were collected. Most of the language in subsection (a) is the clause that defines what “any tax” means. The rest of the sentence focuses

on the duty and the potential liability, “Every person with the duty to account for and pay over any tax... shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.” Thus, subsection (a) threatens that a person will be personally liable “if he fails to carry out his duty” “to account for and pay over any tax.”

The Ada County District Court in Olympic Prefabricators confirmed this interpretation of the statute. The court analyzed Idaho Code § 63-3627(a) and concluded, “The language ‘account for and pay over’ is language applicable to collected taxes.” Idaho State Tax Commission vs. Olympic Prefabricators, Case No. 92637 (4th Dist., Ada County, April 30, 1991). The Olympic Prefabricators case dealt specifically with responsible party liability for uncollected use tax, but the rationale and the language of the case is directly applicable to the consideration of whether Idaho Code § 63-3627(a) will hold a responsible party personally liable for uncollected sales tax.

CONCLUSION

The facts of this case show that the underlying sales tax liability represents uncollected sales tax. The responsible party liability of Idaho Code § 63-3627(a) does not apply to uncollected tax. Therefore, Petitioners are not personally liable for the tax as asserted in the Notice of Deficiency Determination.

THEREFORE, the Notice of Deficiency Determination dated March 18, 2013, is hereby CANCELLED and SET ASIDE.

An explanation of the petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.