

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-715-536-384
[Redacted]	)	
	)	
Petitioner.	)	DECISION
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The Idaho State Tax Commission (Commission) reviewed the protest of [Redacted] (Petitioner), and upholds the Notice of Deficiency Determination (Notice) dated July 21, 2017. This means that Petitioner is responsible for withholding tax, penalty, and interest for the period September 1, 2015, through September 30, 2015, in the **total amount of \$2,338**.

**Background and Audit Findings**

Petitioner is an Illinois based contractor improving real property. [Redacted] subcontracted Petitioner to complete a [Redacted] Store remodel in [Redacted] Idaho for \$89,241. Petitioner was the job site superintendent and completed daily logs listing the first and last name of every worker on the job site.

The Sales Tax Audit Bureau (Bureau) requested payroll information from Petitioner on three occasions in order to determine Petitioner’s withholding compliance, but Petitioner did not respond. Since Petitioner did not provide the requested payroll information, the Bureau computed the tax liability based on industry averages for contracts of this nature using 45% of the total contract price to calculate the wages. The Bureau then held this amount subject to withholding tax, which resulted in a liability of \$2,008.

**Petitioner’s Protest**

Petitioner contends the company consists of only one employee, the sole owner. Petitioner finished some portions of the project, but hired workers to complete the following types of labor: demolition, framing, drywall, minor concrete work inside, and finish carpentry.

## Relevant Tax Code and Analysis

The state of Idaho's withholding tax is levied in section 63-3035(a), Idaho Code. It states in relevant part:

Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter.

Idaho law defines employer and employee to parallel the Internal Revenue Code (I.R.C.) definitions of employer and employee in sections 63-3017 and 3018, Idaho Code. Employer and employee are defined in I.R.C. Chapter 24, section 3401, which states in pertinent part:

(c) For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(d) For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person.

The Bureau requested Petitioner's payroll information to determine Petitioner's compliance with the state of Idaho's withholding tax law. Section 63-3042, Idaho Code, allows the Bureau to examine these records. The applicable part of this section states:

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax payable under this act or the liability at law or in equity of any person in respect to any tax provided in this act or collecting any such liability, the state tax commission or its duly authorized deputy is authorized—

(a) To examine any books, papers, records, or other data which may be relevant or material to such inquiry

After Petitioner disputed its Notice, Petitioner provided the Commission with text message correspondence between itself and multiple workers. Petitioner contends it hired the majority of these workers from Craigslist ads and in parking lots. Petitioner also contends it paid the majority of these workers cash, but Petitioner did not provide the daily logs it completed as a job site superintendent or any payment information for these workers. Petitioner also did not provide any information to demonstrate that the workers were anything other than employees. Based on the information the Commission currently has available, it finds Petitioner meets the requirements of an employer. The Commission finds Petitioner hired workers to perform services and had control over the workers payments, I.R.C. Chapter 24, section 3401(d). As an employer, Petitioner was required to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee, section 63-3035(a), Idaho Code. Since Petitioner did not provide documentation showing withholding taxes were properly paid, the Commission finds the Bureau's withholding tax calculation is reasonable.

### **Conclusion**

On appeal, a deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted

in the Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission upholds the Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be an accurate representation of Petitioner's withholding tax liability for the period September 1, 2015, through September 30, 2015.

The Bureau added penalty and interest to the withholding tax deficiency. The Commission reviewed this addition, and finds it to be appropriate per sections 63-3045 and 63-3046, Idaho Code, and has updated interest accordingly. Interest is calculated through November 30, 2018, and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code until paid.

THEREFORE, the Notice, dated July 21, 2017, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,008	\$100	\$230	\$2,338

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 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.

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