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BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

STATE OF IDAHO

STATE OF IDAHO, DEPARTMENT OF
FINANCE, CONSUMER FINANCE BUREAU,

Complainant,

v.

WALL & ASSOCIATES, INC., A VIRGINIA
CORPORATION,

Respondent.

Docket No. 2019-9-10

**ORDER RE: MOTION FOR
RECONSIDERATION**

This matter having come before the Hearing Officer on the Motion of Respondent for reconsideration of the Hearing Officer's Decision and Order Regarding Complainant's Motion For Preliminary Order And Respondent's Motion For Summary Judgment, dated June 14, 2021, the following decision is entered.

The Respondent in this matter has presented several arguments for reconsideration, which will be addressed in turn.

Wall initially argues that the use of the term "principal" in Idaho Code § 26-2229 (3) (b) demonstrates that taxes cannot be within the definition of debt, as the limitations imposed under that section regarding fee limitations, to that of 20% of the principal amount owed, cannot be applied to a tax liability. Wall argues that "principal" does not fit within meaning of a sum owed as a tax obligation. As asserted, "principal" is argued to be incapable of application to obligations other than those from a private (meaning non government) lenders. Further argument contends again that a tax

liability is always a secured obligation, thus effectively precluding application of the fee limitation provision and illustrating that the interpretation of tax as a debt leads to absurd results in such statutory construction. Wall notes that the term “principal” is not used in the Idaho Code or in reviewed Idaho case authority to describe an amount owed as a tax liability.

As to the last point here, this absence of the term “principal” when describing a tax obligation in the Idaho Code, is not determinative. Regarding the use of the term “principal” in the Act and in Idaho Code § 26-2229 , the term is not defined. The ready application of a meaning which includes that of the underlying or base amount of the subject obligation or liability is, however, apparent. As noted by the Department “principal “is commonly defined in terms of the “sum of money owed”. It is not without reasonable basis to use such a meaning in the potential application of Idaho Code § 26-2229.

There is also insufficient authority to support Wall’s assertion that “principal” only refers to an obligation arising from a private non governmental source. As further noted by the Department, tax obligations are certainly subject to additional charges, such as interest and penalties based upon the initial sum owed. Interpretation of this underlying original amount as an origin or “principal” sum does not lead to absurd results. Wall’s further arguments that this restriction renders Wall incapable from being able to collect a fair or adequate fee are also not determinative. The fee limitation provision found in Idaho Code § 26-2229 does not preclude any number of potential configurations, flat, hourly, etc. which could be utilized. The restrictions of Idaho Code § 26-2229 state a ceiling on charges which may be imposed. The question of the adequacy of fees charged does not itself indicate that the legislature intended to preclude taxes as being within obligations regulated under the Act.

Concerning the renewed arguments regarding secured versus unsecured status of a tax obligation, as stated in the decision and order, the language of Idaho Code § 26-2229 does not

indicate an intent to limit the Act solely to unsecured debt. The language of the Act, statutory history materials and case authority, do not establish such a limit on the scope of the Act.

Wall next contends that the Decision and Order failed to adequately address the issue of the definition of Creditor and the impact of that definition on the meaning of “debt” and “debtor” within the language of Idaho Code § 26-2223. This argument fails. The definition of creditor is not interpreted, as found under the Act, to be a basis for excluding tax from the meaning of debt. The limitations of ‘creditor’ within the language of the Act, does not directly limit the term “debt”.

Next, in the Motion, Wall asserts as argued earlier in the original Motion for Summary Judgement, that the doctrine of construction, *ejusdem generis*, precludes the interpretation of the subject language of Idaho Code § 26-2223(7) to include tax within the definition of debt. This argument though has not presented any additional basis which would require a change in the earlier decision and order. While *ejusdem generis* is part of the methodology used in undertaking a statutory analysis it does not automatically result in the restrictive interpretation argued by Wall in this matter. The use of the phrase “or other indebtedness” does not when following the words “account” and “note” restrict “other indebtedness” to solely obligations arising from accounts or notes. “Other indebtedness” is from the context, interpreted to be a broader more inclusive reference. Again, the use, when preceded by the word, earlier in the subject language, of “any” indicates all of the potential subject items of the class of indebtedness.

Wall notes that it does not contend the language of the statute is limited solely to that of an account or note but “other indebtedness” must be limited to similar liabilities, those which are exclusively private, not governmental based liabilities. This argument though ignores the noted inclusive use of the term “any” as language preceding the terms “account” and “note” in subpart (7). Wall’s arguments attempt to impose a narrow interpretation of the statutory language and

restrictive reading of the use of *ejusdem generis*. The doctrine is an aid in the determination of the intention of the statute, not a rigid application rule that precludes the underlying object of the language which is interpreted to include an indebtedness such as a tax imposed upon an individual.

Next as to the effect of Idaho Code § 63-3050 and § 63-119 the arguments presented similarly do not reach the level nor present new grounds which warrant a revision of the early decision. The interpretation of Idaho Code § 63-3050 by the Idaho Supreme Court has not indicated that the underlying obligation is something other than a debt as indicated by the statute. The enforcement method may entail means used to collect as per a lien foreclosure but that itself does not change the character of the obligation to something which would restrict the meaning of the term “debt” as applied under the Act.

Wall also notes the reference made to the decision of *Haas v. Misner & Lamkin*, 1 Idaho 170, 174 (1867), 1867 WL 2032 and argues that this opinion is not of authoritative value. This decision was not the determinative basis for the rulings entered in the Decision and Order of June 14, 2021. As noted, the analysis in that case was a reasoned examination of the same basic issue at hand in this matter and was considered in the determination of the ultimate interpretation of the term. The Officer notes the statutory analysis undertaken in the Decision.

Wall has cited the decision of *Lemhi County v. Boise Livestock Loan Co.*, 47 Idaho 712, 278 P. 214 (1929) in support of the proposition that the Idaho Supreme Court has subsequently determined that taxes are not debts. *Lemhi County*, notwithstanding, as was noted in the Decision and Order of the Hearing Officer, the Idaho Supreme Court has recognized in language and characterization, taxes as debts in several decisions, See e.g. *Bills v. State of Idaho, Department of Revenue and Taxation*, 110 Idaho 113, 714 P.2d 82 (Idaho Ct. App. 1986); See

also, *Christian v. Mason*, 219 P.3d 473, 148 Idaho 149 (2009); *Idaho State Tax Com'n v. I R Trucking Trust*, 144 Idaho 20, 156 P.3d 521 (2007); *Swope v. Swope*, 112 Idaho 974, 739 P.2d 273 (1987); *Thomas v. Thomas*, 119 Idaho 709, 809 P.2d 1188 (Idaho Ct App. 1991).


The arguments presented by Respondent in the Motion for Reconsideration do not provide sufficient grounds to overturn the Order.

IT IS HEREBY ORDERED that the Respondent's Motion for Reconsideration is denied.

Further,

- 1) Pursuant to Idaho Rules of Administrative Procedure 04.11.01.000, Rule 564, the parties are to submit further materials within 14 days of the date of this Order, including briefing, regarding the penalties and restitution sought by the Department.
- 2) That this decision and the preliminary Decision and Order dated June 14, 2021 shall at present remain confidential and not open and available to the public.

DATED this 14th day of July, 2021.

By: 
David V. Nielsen
Hearing Officer

NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Finance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Finance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code §67-5243(3).

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Director of the Department of Finance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Finance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Finance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Finance (or the designee of the Director). The Director may review the preliminary order on his own motion.

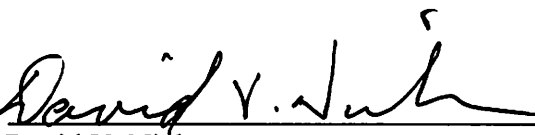
If the Director of the Department of Finance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an

opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 14th day of July, 2021.

By: 
David V. Nielsen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2021, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

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