

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14733
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On March 1, 2000, the staff of the Income Tax Audit Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing tax, penalty, and interest for the 1994 through 1997 taxable years in the total amount of \$162,640.

On May 3, 2000, the Tax Commission received the taxpayer's timely protest and request for redetermination. The taxpayer did not request a hearing and did not submit additional information for consideration. However, the taxpayer communicated with the Tax Commission in an attempt to resolve this matter. The Tax Commission, having reviewed the entire file, hereby issues its decision.

The 1994 through 1997 income tax returns of the taxpayer, a partnership transacting business in Idaho, were selected for audit. After reviewing the taxpayer's returns, the auditor determined that two of the taxpayer's partners had not filed Idaho individual income tax returns. The auditor contacted the nonfiling partners regarding the returns, but the auditor was unable to obtain returns from the partners. Therefore, pursuant to Idaho Code Section 63-3022L(3), the auditor issued a Notice of Deficiency Determination (NODD) to the taxpayer, assessing the partnership for the income tax liability of its two nonfiling partners.

The taxpayer appealed the NODD and stated that one of its nonfiling partners had, subsequent to the NODD, filed Idaho individual returns for the years in question. Additionally, the taxpayer requested and was granted an extension of time for the remaining nonfiling partner

to resolve legal issues pertaining to his ownership of the [Redacted] Associates partnership interest.

The Tax Commission (Commission) sent the taxpayer a hearing rights letter explaining the process of appeal and request for redetermination. The taxpayer requested and was granted two additional extensions of time in order to allow the nonfiling partner time to resolve the legal issues. Despite an extension of time beyond that requested, the Commission did not receive the nonfiling partner's returns, notice that the nonfiling partner had resolved the legal issues related to his partnership interest, or notice that the partner's partnership interest had been transferred to another party.

The Commission reviewed its records and found that one of the two nonfiling partners had, subsequent to the issuance of the NODD, filed his Idaho income tax returns for the years in question. Accordingly, the Commission finds that the NODD should be modified to exclude the income of the partner now in compliance with Idaho's filing requirements.

Idaho Code Section 63-3022L(3) states that, if a nonresident partner of a partnership transacting business in Idaho fails to file an Idaho individual income tax return reporting all or any part of the Idaho taxable income derived from the partnership's transactions in Idaho, the partnership shall include such items in its Idaho taxable income and be taxed at the applicable rate. Since one of the taxpayer's nonresident partners failed to file Idaho individual income tax returns for the years in question, the Commission finds it appropriate to adjust the taxpayers's returns to include the nonfiling partner's partnership income in those years.

The NODD included additions for penalties assessed under Idaho Code Section 63-3046(c). Section 63-3046(c) provides for a penalty when a required return is not filed or when the return is filed but the tax due is not paid. The obligation for a partnership to include the income of a nonresident partner in its income and pay tax on that income only arises when

the nonresident partner fails to file a required return. The taxpayer had no obligation to report the nonfiling partner's income until the partner failed to file the return; consequently, the taxpayer did not fail to file a required return or pay the tax due on a filed return. Therefore, the Commission finds that the penalty assessed under Idaho Code Section 63-3046(c) is inapplicable.

The NODD included additions for interest in accordance with Idaho Code Section 63-3045(b). The Commission upholds the assessment of interest and finds it appropriate as applied to the modified liability.

WHEREFORE, the Notice of Deficiency Determination dated March 1, 2000, is hereby MODIFIED in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest for the following years:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$40,569	\$18,885	\$59,454
1995	\$ 1,768	\$ 690	\$ 2,458
1996	\$ 7,411	\$ 2,277	\$ 9,688
1997	\$ 1,626	\$ 358	\$ 1,984
		TOTAL DUE:	<u>\$73,584</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 included with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, 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.: [Redacted]

ADMINISTRATIVE ASSISTANT 1