

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 16301
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On November 16, 2001, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting an Idaho income tax liability in the amount of \$42,092 for the 1996 through 2000 taxable years. On January 18, 2002, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request an informal conference. The Tax Commission, having reviewed the file, hereby issues its decision.

This is a nonfiler case. [Redacted], Inc. has not filed Idaho corporate income tax returns for the 1996 through 2000 taxable years. Prior to 1996 the corporation owned and operated a radio station in [Redacted], Idaho, and was actively engaged in business in Idaho. The corporation filed a 1995 Idaho corporate income tax return (Form 41) that indicated that it was a 100% Idaho corporation under the Idaho Code § 63-3027 apportionment formula.<sup>1</sup> According to the President of the corporation, sometime in 1996 the taxpayer entered into an agreement with another broadcasting company “and sold all of its Broadcast operations” to this other company. Among the assets sold was the taxpayer’s FCC license. The taxpayer has not filed federal corporate income tax returns for any of the 1996 through 2000 taxable years, so it is not entirely clear what other assets of [Redacted] were also sold as part of this transaction. But in any event,

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<sup>1</sup> The Tax Commission’s auditor characterized the corporation as a subchapter S corporation in the explanation included with the Notice of Deficiency Determination. However, a review of the 1995 Idaho return filed by [Redacted], indicates that the corporation did not file as an S corporation in that year and there has been no showing that the corporation has, since 1995, made a valid S corporation election.

according to the information provided by the President of [Redacted], the FCC license was sold pending approval of the sale by the [Redacted]. That approval was finally given in late 2000. It is the taxpayer's contention that it did no business in Idaho and had no Idaho income tax filing requirement for the 1996 through 2000 taxable years as a result of this sale of its "Broadcast operations." Unfortunately for the taxpayer, the Tax Commission must disagree.

Idaho Code § 63-3030(a)(3) establishes the Idaho income tax filing requirement for a corporation that has not elected to be taxed under subchapter S of the Internal Revenue Code. Section 63-3030(a)(3) provides that an Idaho income tax return is required for "[e]very corporation which is transacting business in this state, authorized to transact business in this state or having income attributable to this state, unless exempt from the tax imposed in this chapter." Thus, the section requires a corporation to file an Idaho income tax return if, for a particular taxable year, that corporation is either (1) transacting business in Idaho, (2) authorized to transact business in Idaho, or (3) has income attributable to this state. A corporation is transacting business in Idaho if it is "engaging in . . . any activity in this state[] for the purpose of or resulting in economic or pecuniary gain or profit," or otherwise meets the definition of "transacting business" set out in Idaho Code § 63-3023. A corporation is authorized to transact business in Idaho if it is incorporated under the laws of the state of Idaho or if it is a foreign corporation that is required to obtain, or has obtained, a certificate of authority to transact business from the Secretary of State pursuant to Idaho Code § 30-1-1501. A corporation has income attributable to Idaho (and therefore must file an Idaho return) if it has any Idaho taxable income that is either apportioned to this state, or allocated to this state, under the provisions of Idaho Code § 63-3027 or Idaho Code § 63-3027A.

[Redacted]. is an Idaho corporation. It filed its Articles of Incorporation with the Idaho Secretary of State on September 2, 1993. The corporation also filed annual report forms with the Idaho Secretary of State up to, and including, the 1998 calendar year. No annual report form was filed for 1999 or 2000. In February, 2000, the corporation was administratively dissolved by the Idaho Secretary of State's Office. Because [Redacted] was an Idaho corporation authorized to do business in this state in each of the 1996 through 1999 taxable years, and for at least the first two months of 2000, it clearly has an Idaho corporate income tax filing requirement for those taxable years even if it actually conducted no business activity in this state. See Idaho Code § 63-3030(a)(3). It is also likely that [Redacted] had income attributable to Idaho under Idaho Code § 63-3027 in at least some of those years relating to the gain recognized from the sale of the corporation's FCC license and other assets. See Idaho Code §§ 63-3027(i) [setting out method for apportioning business income to Idaho] and 63-3027(f) [setting out method for allocating nonbusiness income relating to the sale of capital assets].<sup>2</sup> As a result and in addition to the fact that the taxpayer was authorized to do business in Idaho during the years under review, it is likely that [Redacted] was required to file Idaho corporate income tax returns in those years that it recognized any of the gain from the sale of its "broadcast operations" assets.

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<sup>2</sup> According to the letter of protest filed on behalf of [Redacted], "[t]here was a long-term capital gain by [Redacted] on the 'sale' of the FCC Radio broadcast licenses." Letter of protest dated January 14, 2002, p. 1. The amount and the timing of this long-term gain was not disclosed in the protest letter. In addition, records obtained from the Internal Revenue Service through the exchange of information agreement between the IRS and the Idaho State Tax Commission indicate that [Redacted]. has not filed any federal corporate income tax returns for the 1996 through 2000 taxable years. Since [Redacted] has not filed federal corporate income tax returns for these years, the Tax Commission has been unable to determine the precise amount of gain recognized by [Redacted] from the sale of its broadcast assets, or in what taxable year(s) the gain was recognized. But in any event, based on the information that is presently available to the Commission, it is likely that some or all of this gain is attributable to Idaho under the provisions of Idaho Code § 63-3027. To the extent the gain is not attributed to Idaho, it would likely be attributed to the state of Utah under Utah Code §§ 59-7-302 through 59-7-321. In either event, the gain is not exempt from Idaho or Utah state income tax and [Redacted] is required to file appropriate state corporate income tax returns and report the gain to the appropriate states.

Because [Redacted] was administratively dissolved in February, 2002, the company was no longer authorized to transact business in Idaho from that point forward. It was, however, still required to file an Idaho corporate income tax return for that taxable year since it was authorized to do business in this state for a portion of the year. Under Idaho law, the Idaho Secretary of State is authorized to “administratively” dissolve any Idaho corporation that fails to meet certain requirements such as filing an annual report form with the Secretary. Idaho Code §§ 30-1-1421 and 30-1-1420(1). “A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs . . . .” Idaho Code § 30-1-1421(3). While a corporation that has been administratively dissolved is no longer authorized to conduct any business in Idaho other than that necessary to wind up and liquidate its business affairs, that does not mean that the corporation is relieved of its otherwise lawful debts<sup>3</sup> or from its duty to file an Idaho corporate income tax return. As a result, [Redacted] is required to file an Idaho corporate income tax return for the 2000 taxable year and to pay the Idaho income tax owing for that taxable year, even though the company was administratively dissolved in February of that year.<sup>4</sup>

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<sup>3</sup> There is no provision in the Idaho general business corporation laws [Chapter 30-1, Idaho Code] that allows a corporation that has been administratively dissolved to cut off a creditor’s rights to collect or otherwise enforce a debt of the corporation. The only mechanism available under the general business corporation laws to limit or cut off a creditor’s right to collect on a debt owed by the corporation is through a voluntary dissolution coupled with notification of the dissolution under Idaho Code §§ 30-1-1406 [relating to known claims against the corporation] and 30-1-1407 [relating to unknown claims against the corporation]. See Idaho Code §§ 30-1-1402 and 30-1-1403 [setting out requirements for voluntarily dissolving a corporation]. Absent a voluntary dissolution and a subsequent notification of the dissolution to the creditors, the corporation remains liable for its debts and a creditor can collect either from the undistributed assets of the corporation [if any] or from the shareholders of the corporation on a pro-rata basis up to the total amount of corporate assets distributed to the shareholders. See Idaho Code § 30-1-1407(4).

<sup>4</sup> It should also be pointed out that Idaho Code § 63-3030(a)(3) does not provide that a corporation must be authorized to do business in this state for the entire taxable year before it is required to file an Idaho corporate income tax return. To the contrary, a corporation that is authorized to do business in Idaho for any part of a taxable year is required to file an Idaho corporate income tax return under section 63-3030(a)(3).

The Tax Commission hereby finds that [Redacted], was an Idaho corporation authorized to do business in this state during the 1996 through 2000 taxable years. As a result, the company is required to file Idaho corporate income tax returns for each of those taxable years. In addition, the taxpayer has not established that the amount of Idaho taxable income set out in the Notice of Deficiency Determination is incorrect or otherwise erroneous. As a result, the Tax Commission has no alternative but to affirm the amount of Idaho taxable income shown on the Notice of Deficiency Determination. See Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986) (a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous).

The Commission is, however, required to make a slight correction to the amount of tax that was calculated by the audit staff. The audit staff calculated the amount of tax pursuant to Idaho Code § 63-3022L which provides that in certain circumstances the income of a subchapter S corporation may be taxed at the corporate level (and at the corporate rate) rather than being passed through to the shareholders as is normally the case. The audit staff also asserted the \$20 minimum corporate franchise tax pursuant to Idaho Code § 63-3025A. From a review of the file, it is clear that the auditor incorrectly treated [Redacted] as a subchapter S corporation. The Commission's records indicate that [Redacted] has never filed an Idaho subchapter S corporate return, and there has been no showing that a valid election under Internal Revenue Code § 1362 has ever been made by the company. Therefore, the Commission finds that [Redacted] was not a subchapter S corporation during any of the 1996 through 2000 taxable years. As a result, it was incorrect to impose the \$20 minimum franchise tax on top of the tax imposed under Idaho Code § 63-3022L. The amount of tax computed on the November 16, 2001 Notice of Deficiency Determination must, therefore, be recalculated under Idaho Code § 63-3025 and in a manner

consistent with the Commission's finding that [Redacted] was not a subchapter S corporation during any of the years under review.

WHEREFORE, the Notice of Deficiency Determination dated November 16, 2001, is hereby MODIFIED, and as so Modified is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	\$5,468	\$1,367	\$2,268	\$ 9,103
1997	5,631	1,408	1,844	8,883
1998	5,727	1,432	1,435	8,594
1999	5,819	1,455	1,035	8,309
2000	5,975	1,494	584	<u>8,053</u>
TOTAL AMOUNT DUE				<u>\$42,942</u>

Interest is calculated through July 31, 2002, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

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 with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2002, 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]

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ADMINISTRATIVE ASSISTANT 1