

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 14585
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On December 10, 1999, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioner), proposing income tax, penalty and interest for the years 1996 and 1997 in the total amount of \$5,580.

On May 14, 2001, a timely protest and petition for redetermination was filed by the petitioner's representative (representative). An informal hearing was not requested by the petitioner or his representative. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

The petitioner met Idaho's individual income tax filing requirement based on federal information for the [Redacted] partnership (partnership), in which the petitioner was a partner, and petitioner's W-2 income.

The representative sent in a power-of-attorney and stated the petitioner did not work in 1996 because he was disabled. The representative also said he requested information from the [Redacted] and would file the returns when he received the information. The petitioner's returns were not sent so a NOD was issued based on one-half of the 1099 income for the partnership and the petitioner's W-2 income.

The original NOD was issued for years 1996 and 1997. Since the petitioner's 1997 return was filed, the NOD dated December 10, 1999 was canceled for 1997 only. The 1997 tax year will not be addressed any further in this decision.

A follow-up letter was sent after the 1996 return was not received. TDB contacted the representative who said he would send in the return. When the return was not received, the petitioner's file was transferred to the Legal/Tax Policy division for further review.

On December 7, 2000, the Tax Policy Specialist (policy specialist) sent the representative a hearing rights letter to inform him of the petitioner's alternatives for redetermining a protested NOD. A follow-up letter was sent on May 17, 2001.

The representative told the policy specialist that the partnership consisted of two individuals who did framing work. The representative claimed the petitioner was injured on May 30, 1996 when he fell off the roof at one of the company's framing jobs and did not work the rest of the year.

On December 26, 2001, the representative sent a 1996 partnership return that showed there was no partnership income to distribute. The representative showed that all of the partnership income went to the petitioner's partner, [Redacted], as "guaranteed payments to partners." The representative stated he completed the partnership return based on the petitioner's word that he did not receive any of the income from the partnership in 1996. The "cost of goods sold" information was obtained by the representative from the partnership's previous accountant and the depreciation information was obtained by the representative from the 1995 partnership return's depreciation schedules. The representative also submitted a 1996 individual income tax return for the petitioner that showed no income earned for that year.

On January 22, 2002, the representative submitted the petitioner's financial statement form to see if the Commission could reduce the petitioner's NOD because of financial hardship. It was determined that the petitioner did not qualify to have his NOD reduced because of financial hardship.

The Commission's records show the partnership commenced on December 1, 1994 and do not show a ceased date. All payments from [Redacted]. were made to the partnership for the entire year. Based on all the information in the petitioner's file and in the Commission's records, it appears the partnership was a going concern in 1996 for the entire year.

The representative informed the policy specialist that there was no partnership agreement to govern how the partnership's profits and losses would be distributed between the two partners. In the situation where there is no partnership agreement, Idaho's Uniform Partnership Law governs how profit and losses will be distributed among partners. Idaho Code section 53-318 stated in pertinent part:

The right and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

1. Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; . . . (Emphasis added)

All of the petitioner's income in his 1996 NOD was from the partnership. Based on the expenses for cost of goods sold and depreciation claimed in the partnership return filed by the representative, the ordinary income of the partnership in 1996 would be \$63,758. The petitioner's share of the ordinary income from the partnership would be \$31,879.

Idaho Code § 63-3002 states:

**63-3002. Declaration of intent.** It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a petitioner to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and

otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Since there was no partnership agreement and no evidence the partnership was dissolved in 1996, the petitioner is responsible for half of the partnership's income for that year. Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, Notice of Deficiency Determination dated December 10, 1999, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that petitioner pay the following tax, penalty, and interest for the year 1996:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,819	\$455	\$893	\$3,167

Interest is calculated through December 4, 2003.

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

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

[REDACTED]

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