

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15615
[Redacted])	
)	DECISION
Petitioner.)	
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On May 8, 2001, the Income Tax Audit Bureau (ITA) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioner), proposing additional income tax and interest for the taxable years 1998 and 1999 in the total amount of \$25,546. The petitioner filed a timely protest and petition for redetermination. The Commission, having reviewed the file, hereby issues its decision.

The petitioner is a partnership that according to the partnership agreement engages in “the business of buying, owning, investing in, developing, and managing real estate, including farming operations and the investment and management of other assets for the profit of the partnership.” On the partnerships’ 1998 and 1999 Idaho income tax returns, the partnership reported an Idaho apportionment factor of 100%. For tax years 1998 and 1999, all of the partnership’s partners are nonresidents and each partner shares an equal share in the profits and loss of the partnership. ITA’s review of the Commission’s records reveals some but not all of the partners filed Idaho income tax returns for tax years 1998 and 1999.

On May 8, 2001, ITA issued a Notice of Deficiency Determination proposing additional income tax and interest for the taxable years 1998 and 1999 in the total amount of \$25,546. ITA relied upon Idaho Code section 63-3022L as authority to issue the Notice of Deficiency Determination to the partnership. Idaho Code section 63-3022L states, in pertinent part, that

63-3022L. Individual officers, directors, shareholders, partners or members of a corporation or partnership. (1) Individual . . . partners . . . of a . . . partnership transacting business in Idaho may elect to have Idaho taxable

income described in subsection (2) of this section reported and taxed as Idaho taxable income . . . partnership. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. The election shall be made on the return of the . . . partnership from which the income is received and on which the income is reported in Idaho taxable income. The election in this section is not available to an individual who has Idaho taxable income in addition to income described in subsection (2) of this section.

(2) The election in subsection (1) of this section applies to:

(a) Wages, salary and other compensation paid by . . . partnership to such . . . partners . . . to the extent the compensation is Idaho taxable income of the individual to whom it is paid under section 63-3026A, Idaho Code; and

(b) The share of any income, loss, deduction or credit of . . . partnership required to be included on such . . . partner's . . . federal return except that such amount shall first be apportioned and allocated in the manner provided in section 63-3027, Idaho Code. . . .

(3) If no election is made and . . . [a] partner . . . of a . . . partnership transacting business in Idaho fails to file an Idaho income tax return reporting all or any part of the items described in subsection (2) of this section or fails to pay any tax due thereon, such . . . partnership shall include such items in its Idaho taxable income and be taxed at the rate applicable to corporations.

Emphasis added.

The petitioner filed its petition for redetermination on May 23, 2001. The petitioner argues that it mistakenly reported that 100% of the petitioner's income was from an Idaho source. The petitioner argues "the partnership performs various activities in various locations, including the ownership of rental property located within Idaho. As such, only the net income from the rental activities in Idaho is attributable to Idaho. Furthermore, none of the partners of the partnership are residents of the State of [Redacted]."

ITA forwarded petitioner's petition for redetermination to Legal/Policy for resolution in June of 2001. As previously mentioned, 100% of the petitioner's income for tax years 1998 and 1999 was apportioned to Idaho on the returns as originally filed and in the Notice of Deficiency Determination. After reviewing additional information submitted by the petitioner, the petitioner has convinced the Commission that the income recognized in 1998 from the sale of [Redacted] property is nonbusiness income allocable to [Redacted]. The remaining income items in 1998 as

well as all of the income for 1999 appears to have been correctly treated as business income subject to apportionment. Since, the petitioners have not provided sufficient information to show that the use of a 100% Idaho apportionment factor is incorrect, the Commission upholds ITA use of a 100% Idaho apportionment factor; however, the Commission does modify ITA's determination of the amount of income subject to apportionment by removing the nonbusiness income as follows:

	1998	1999
Apportionable Income per NODD	\$368,540	\$157,679
Removal of Nonbusiness Income	(354,610)	
Apportionable Income	13,930	157,679
Idaho Apportionment Factor	100%	100%
Income Apportioned to Idaho	13,930	157,679

From June of 2001 through the date of this decision, the petitioner has been very cooperative in getting the nonresidents partners to file Idaho income tax returns. As of the date of this decision, all six of petitioner's partners have filed Idaho income tax returns for tax year 1999; however, only four of the six partners have filed income tax returns for tax year 1998. The partners that have not reported their Idaho source income to Idaho for taxable year 1998 are [Redacted]. Each of these partners received Idaho source income totaling \$2,322. Accordingly, that portion of ITA's Notice of Deficiency Determination dated May 8, 2001, relating to tax year 1999 is withdrawn and that portion of ITA's Notice of Deficiency Determination dated May 8, 2001, relating to tax year 1998 is modified to reflect that only two of the six partners have failed to report their Idaho source income to Idaho for tax year 1998.

WHEREFORE, the Notice of Deficiency Determination dated May 8, 2001, 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 petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 371	\$120	\$491

Interest is calculated through October 15, 2003, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

An explanation of the petitioners' rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, 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]
