

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17498
[Redacted])	
Petitioner.)	DECISION
)	
)	
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On May 20, 2003, 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 1997, 1999 and 2000 in the total amount of \$6,882.

On July 16, 2003, a timely protest and petition for redetermination was filed by the petitioner. An informal hearing was not requested by the petitioner. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

This began as a nonfiler case covering tax years 1997 through 2000. Shortly after the initial nonfiler letter was sent on February 7, 2003, the petitioner filed his 1998 income tax return claiming a refund of \$323. The refund was not issued as it was beyond the statute of limitations to claim.

The NOD issued for 1997 was based on federal wage information. However, during tax years 1999 and 2000, the petitioner was a partner in a business called [Redacted] for which no partnership returns have been filed. TDB was able to locate 1099-MISC income documents attributable to the business. For 1999, TDB assessed the petitioner one-half of the business income and, for 2000, one-half of the business income along with his individual 1099-MISC (miscellaneous) income and 1099-R (retirement distribution) income.

The petitioner protested the NOD and provided copies of his 1997 and 1998 federal and Idaho income tax returns. The petitioner claimed withholding credit for both years, but only

provided a W-2 for 1998. Based on the fact that the petitioner worked for the same company both years and qualified for a refund in 1998, allowance was given for the 1997 withholdings shown. TDB at that time cancelled the NOD for 1997 and that tax year will not be addressed any further in this decision.

The petitioner then filed a 2000 income tax return that showed only his individual 1099-MISC and the 1099-R income. TDB advised the petitioner that the return could not be accepted as filed because income from the partnership had not been included.

The petitioner stated that his partner, [Redacted] handled all the paperwork for the business, and she refused to provide him with any documentation regarding the business. In late November, 2003, TDB spoke with [Redacted] who stated that until now she was unaware that the partnership returns had not been filed. [Redacted] stated that all of the business records were given to a bookkeeper who is now living in [Redacted]. [Redacted] was in contact with the bookkeeper's brother who had access to her storage unit. [Redacted] was going to attempt to reclaim the business records from storage and have the business returns completed and filed. As of March 17, 2004, no business returns had been received by the Commission, so the petitioner's file was transferred to the Legal/Tax Policy Division for further review.

On March 22, 2004, the Tax Policy Specialist (policy specialist) sent the petitioner a letter to inform him of his alternatives for redetermining a protested NOD. A follow-up letter was sent on April 26, 2004. The petitioner did not respond to either letter.

The Commission's records show the partnership commenced on January 26, 1999, and do not show a ceased date.

No partnership agreement has been presented to show 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 53-3-401(b) stated:

Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

Idaho Code section 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 presented, the petitioner is responsible for half of the partnership's income for the years 1999 and 2000 and the 1099 income received in 2000. Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated May 20, 2003, 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$1,083	\$271	\$328	\$1,682
2000	1,822	456	406	<u>2,684</u>
			TOTAL DUE	<u>\$4,366</u>

Interest is calculated through October 3, 2004.

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 _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2004, 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] [Redacted]
[Redacted] _____