

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 17850
[Redacted]	)	
Petitioner.	)	DECISION
	)	
	)	

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On March 14, 2003, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted]. (petitioner), proposing additional income tax, penalty, and interest for the taxable years 1997 and 1998 in the total amount of \$49,200. The petitioner filed a timely protest and petition for redetermination. A hearing was held on March 14, 2005. The Tax Commission, having reviewed the file, hereby issues its decision.

The petitioner is a corporation incorporated under the laws of Idaho and has registered to do business in Idaho with the Idaho Secretary of State. The petitioner at the time of the issuance of the Notice of Deficiency Determination was current in its filings with the Idaho Secretary of State. Every corporation transacting business in this state, authorized to transact business in this state, or having income attributable to this state, unless exempt from tax imposed by the Idaho Income Tax Act is required to file an Idaho income tax return. Idaho Code section 63-3030(3). The Notice of Deficiency Determination was issued by the Commission's Tax Discovery Bureau as a result of having determined that the petitioner had an Idaho filing requirement in accordance with Idaho Code section 63-3030(3).

Tax Discovery first contacted the petitioner in May of 2002 in an attempt to secure the filing of 1997 and 1998 corporate income tax returns since the petitioner had not filed Idaho income tax returns for these years. In early March of 2003, Tax Discovery received Idaho corporate income tax returns for tax years 1997 and 1998; however, Tax Discovery rejected the

returns as not being valid and on March 14, 2003, Tax Discovery issued its Notice of Deficiency Determination.

On April 7, 2003, the petitioner filed a petition for redetermination that Tax Discovery determined was not a perfected protest in accordance with Idaho Code section 63-3045(1)(b). Tax Discovery informed the petitioner in a letter dated April 10, 2003, that the petitioner had failed to perfect its protest. The petitioner perfected its protest by letter dated April 24, 2003. In the petitioner's perfected protest, the petitioner makes the following argument:

. . . I object for a number of reasons, one being the time frame allowed for a Notice of Deficiency Determination has passed. The second reason and the main objection is that [Redacted]. suffered from a catastrophic fire on April 27, 1997. [Redacted]. was a borrower from [Redacted]. After the fire of April 27, 1997 [Redacted] ultimately foreclosed on their loan as it was under collateralized stemming from the failure of the insurer to forward insurance proceeds. The insurer, at [Redacted] insistence placed the banks name on all insurance proceeds and the bank demanded those funds along with **all other funds received**, be place with the bank. Over the period of 1997 and 1998 [Redacted] forwarded **all** proceeds to [Redacted] in an effort to stabilize their loans with [Redacted]. No funds were ever allowed back to [Redacted]. and eventually the company failed. There is extensive testimony, pleadings, affidavits, and other sworn statements as to the entire matter and allocation of funds. . . . I have no doubt you will find there was absolutely no income constructively received by [Redacted]. in the years you have chosen to question, and in fact I believe there will be a loss carry forward of nearly two million dollars stemming from the losses incurred in 1997 fire. . . .

In a letter received by the Commission on May 22, 2002, the petitioner's president explained that the petitioner was basically inactive and was not liquidated due to the advice of a Boise attorney that there may yet be a possibility of an insurance settlement. [Redacted]

In a subsequent letter dated March 24, 2004, the petitioner's representative raised a new argument by asserting that the petitioner and the Commission had entered into a prior Closing Agreement that closed the years at issue from further assessment. More specifically,

This matter was fully settled with [Redacted] [a former Commission Collections Officer] quite some time ago. She was paid a check in full settlement and she released the lien and caused the return of the Mercedes 300E vehicle.

There is no lawful basis for the Commission to go forward . . . and we reserve all rights to recover our costs and expenses in protecting our interests in this wrongful claim.

Accordingly, the issues before the Commission are:

1. Was the Notice of Deficiency Determination issued subsequent to the expiration of the statute of limitations?
2. Was the Notice of Deficiency Determination in error for reflecting that the petitioner had Idaho taxable income for the tax years at issue?
3. Was the Notice of Deficiency Determination issued in violation of a prior Closing Agreement that prohibited the Commission from making additional assessments on the tax years at issue?

#### Issue 1 – Statute of limitations

Idaho Code section 63-3068 governs the timeframe in which to issue a notice of deficiency determination and states, in pertinent part, that

(d) *In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.*

(Emphasis added). Since the petitioner failed to file valid Idaho corporate income tax returns for tax years 1997 and 1998, the statute of limitations for issuance of a notice of deficiency determination had not expired; thus, the Commission was within its authority under Idaho Code section 63-3068(d) to issue the Notice of Deficiency Determination on March 14, 2003.

Issue 2 – Idaho Taxable Income

Tax Discovery determined the amount of Idaho taxable income for these years as follows:

Tax Year	1997	1998
Payroll Reported To Idaho Department of Labor	\$149,088	\$2,193
Multiplier	2.5	2.5
Estimated Gross Income	\$372,720	\$5,483
Less Payroll	(\$149,088)	(\$2,193)
Income Subject to Apportionment	\$223,632	\$3,290
Idaho Apportionment Factor	100%	100%
Income Apportioned to Idaho	\$223,632	\$3,290
Income Allocable to Idaho		
Idaho Net Operating Loss Deduction		
Idaho Taxable Income	<u>\$223,632</u>	<u>\$3,290</u>

Tax Discovery determined the amount of gross income attributable to the petitioner by multiplying the amount of payroll reported under the petitioner’s federal employer identification number to the Idaho Department of Labor by 2.5 times. The petitioner in its April 24, 2003, petition for redetermination argued that in 1997 [Redacted] foreclosed on the petitioner’s loans and that all proceeds from the petitioner’s insurer plus “all other funds received” were forwarded to [Redacted] in order to stabilize the loans; however, the petitioner has not provided the Commission with a detailed listing of the various funds received. Federal Treas. Regulation 1.61-1(a) defines gross income to be “all income from whatever source derived, *unless excluded by law*” (emphasis added). The petitioner has not provided the Commission with any legal authority for exclusion from gross income of the funds received in 1997.

In arriving at Idaho taxable income, Tax Discovery allowed the petitioner a deduction for the payroll so reported and treated the company as conducting 100% of its business within Idaho. The petitioner has not provided any other documentation in support of additional deductions including a deduction for a loss as the result of a fire. The U.S. Supreme Court has stated:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefore can any particular deduction be allowed. . . . Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

*New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934); *see also Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984); *Bistline v. Bassett*, 47 Idaho 66, 272 P. 696 (1929).

The petitioner has not met its burden of showing its entitlement to any other deduction; therefore, the Commission upholds Tax Discovery's calculation of Idaho taxable income as shown in the Notice of Deficiency Determination.

### Issue 3 – Closing Agreement

During the redetermination process, the petitioner made numerous references to a prior agreement with the Commission that the petitioner felt foreclosed the Commission from issuance of a notice of deficiency determination on these tax years. In support of its position, the petitioner provided the Commission with a copy of a letter dated May 25, 1997, sent on the petitioner's behalf by a prior representative to a Commission Collections Officer dealing with an offer in compromise. The letter identified the petitioner and two other businesses [Redacted] as being part of the offer in compromise. The letter contained the following opening paragraph:

This letter shall reduce to writing the terms of the offer in compromise that you and I discussed in person and over the phone. The total settlement is \$12,000. This amount shall constitute a full and complete settlement of the amounts owed the Tax Commission including but not limited to the following tax periods:

Tax Type and Period	Amount of Tax
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Under the tax type and period was a listing of 11/94 through 3/95 sales tax assessments and 1/95 through 7/96 withholding assessments. In addition to the typed words there were

several handwritten notations including handwritten changes to the previous paragraph to make it read as follows:

This letter shall reduce to writing the terms of the offer in compromise that you and I discussed in person and over the phone. The total settlement is ~~\$12,900~~ \$16,800. This amount shall constitute a full and complete settlement of ~~the~~ all (Sales WH, Income) amounts owed the Tax Commission including but not limited to the following tax periods:

Two sets of initials followed the second change.<sup>1</sup> Another handwritten notation indicates that the payoff amount was paid on June 11, 9[?].<sup>2</sup> The remaining paragraphs contained the following:

[Redacted] [Commission Collections Officer], the above amounts are the balances off [sic] the two warrants and do not include the amounts that we discussed for the “new [Redacted]” and the other small balance we discussed for [Redacted].

We will pay the full amount owed by May 28, 1997, and all liens will be released and property previously seized will be returned to [Redacted]. I have spoke with [Redacted] and all amounts owed to the State Tax Commission will be remitted on time and the filings made on time.

The Commission’s copy of that same May 25, 1997, letter does not exactly match the copy provided by the petitioner with respect to the handwritten notations and contains a number of differences. For example on the Commission’s original, the handwritten notes were made in blue ink and included the change from \$12,000 to \$16,800 but not the change for the “all (Sales WH, Income).” Additionally, the Commission’s copy does not contain the handwritten notation indicating that the payoff amount “was paid” or the date, year, or initials of the Commission Compliance Officer. What is clear from reviewing both versions of the May 25, 1997, letter is

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<sup>1</sup> The wording crossed out above represents the language that was altered and the underlined wording represents the handwritten changes.

<sup>2</sup> On the copy provided to the Commission, the last number in the year had been truncated. Other internal documentation reflects that this transaction did occur on June 11, 1997.

that the offer in compromise does not pertain to the petitioner's corporate income tax returns for tax years 1997 and 1998. No corporate income tax assessment for 1997 or 1998 existed as of June 1997; thus, the Commission's compliance officer would not have had any knowledge of what the corporate assessment was in order to have included that assessment in any negotiations with the petitioner. Furthermore, the due date for the filing of a corporate income tax return for 1997 and 1998 was in April of 1998 and 1999, respectively, several months after the "compromise" on the sales and withholding assessments. Therefore, the Commission finds that documentation provided regarding a prior resolution of sales and withholding assessments does not bar the Commission from issuing the March 14, 2003, Notice of Deficiency Determination for unpaid 1997 and 1998 corporate income taxes.

WHEREFORE, the Notice of Deficiency Determination dated March 14, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

YEAR	TAX	PENALTY	INTEREST	TOTAL
1997	\$ 29,818	\$ 7,455	\$ 15,562	\$52,835
1998	\$ 439	\$ 110	\$ 195	\$ 744
			TOTAL DUE	<u>\$53,579</u>

Interest is calculated through November 30, 2005, 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 petitioner's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, 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]  
[Redacted]

Certified Mail No.