

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20957
[REDACTED])	
)	DECISION
Petitioner.)	
)	
)	

On December 20, 2007, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioner) denying the petitioner’s refund request for tax year 2003 in the total amount of \$27,685. The petitioner filed a timely protest and petition for redetermination. A hearing was held on July 22, 2008. The Tax Commission, having reviewed the file, hereby issues its decision.

I. PROCEDURAL BACKGROUND

On September 12, 2007, the Commission received an amended return for tax year 2003 seeking a refund of tax in the amount of \$27,685. The amended return was filed to claim income associated with a partnership as nonbusiness income not subject to apportionment. The amended return was filed within three years from October 15, 2004, the date the original 2003 return was filed. On December 20, 2007, the Tax Commission’s Income Tax Audit Bureau (Bureau) denied the petitioner’s refund request since the petitioner failed to protest a Notice of Deficiency Determination dated September 1, 2005, in which the same partnership income at issue was reclassified from nonbusiness income to business income. The petitioner did not protest the Bureau’s findings in the Notice of Deficiency Determination issued in 2005.

II. ISSUES

In the petitioner’s petition for redetermination and subsequent correspondence, the petitioner argues that (1) although the petitioner did not protest the September 1, 2005, Notice of

Deficiency Determination, the petitioner should be allowed its refund claim due to unique circumstances, and (2) the partnership was not part of the petitioner's unitary business, thus the gain on the sale of an intangible (i.e. the partnership interest) is nonbusiness income allocated to the petitioner's commercial domicile outside of Idaho.

III. FACTS

In a statement attached to the amended return filed in 2007 for tax year 2003, the petitioner explained that when it filed its original 2003 Idaho income tax return, the petitioner had correctly allocated to Idaho a piece of a partnership's distributed share of operating income but had incorrectly reported, as allocable income, part of a gain on the petitioner's sale of its ownership interest in the partnership. In 2000, the petitioner acquired a 13 percent profit interest in a partnership that was subsequently sold in 2003. The petitioner did not have a capital or voting interest in the partnership and did not have a contractual or actual right to directly or indirectly manage the business affairs of the partnership. The petitioner argues that the partnership was not part of its unitary business; however, since the partnership was transacting business within Idaho, some of the partnership's distributed ordinary income or loss was allocable to Idaho during the petitioner's ownership of the partnership. More specifically, in the original return filed for 2003, the petitioner subtracted from income subject to apportionment nonbusiness income totaling \$29,782,460, all of which relates to the partnership the petitioner argues was not part of its unitary business. The petitioner treated \$458,679 of the \$29,782,460 as income allocable to Idaho.

When filing the amended return, the petitioner once again subtracted in arriving at income subject to apportionment the \$29,782,460; however, the petitioner only allocated \$94,410 of the \$29,782,460 back to Idaho. The \$364,269 difference (i.e. \$458,679 less the

\$94,410) is presumably that portion of the \$458,679 that the petitioner now claims should not have been allocated to Idaho but instead allocated to the petitioner's commercial domicile outside of Idaho since it represents a gain on the sale of an intangible.

Prior to the filing of the amended return for tax year 2003, on September 1, 2005, the Bureau issued a Notice of Deficiency Determination as part of an audit of the petitioner's 2001 through 2003 Idaho corporate income tax returns. For tax year 2003, the Bureau reclassified from nonbusiness income to business income the \$29,782,460 amount at issue, thus increasing the amount of the petitioner's income subject to apportionment by the \$29,782,460. The Notice of Deficiency Determination clearly stated that the petitioner had until November 3, 2005, in which to protest the Bureau's findings. The petitioner did not file a protest. The petitioner's tax manager stated in a letter dated October 27, 2005, that "we do not concur with the audit position that you advanced in support of the audit adjustments; however, given our time and resource constraints, **we have decided not to pursue this matter any further.**" Emphasis added.

As previously mentioned, the petitioner filed an amended return for 2003 seeking a refund on the very issue it had indicated in 2005 that it would not pursue any further. On December 20, 2007, the Bureau issued a Notice of Deficiency Determination denying the petitioner's current refund request on the following grounds:

On September 1, 2005 an audit adjustment was sent [Redacted] disallowing the nonbusiness income and apportioning the allocated income previously reported on the original return. The audit was not protested and subsequently paid in full. Based upon this information, the refund claim recently filed with Idaho regarding allocated income has been denied.

In its petition for redetermination and subsequent letters, the petitioner argues that the Commission should allow the refund claim since the petitioner's tax director at the time the September 1, 2005, Notice of Deficiency Determination was issued was in the process of leaving

the company, which is why the protest was not filed, and that the petitioner was in the process of transferring its tax return preparation work from its previous tax providers to its current tax providers. These circumstances resulted in the Notice of Deficiency Determination not receiving the attention it required at that time. When the Commission pointed out the tax manager's letter dated October 27, 2005, the petitioner argued that the tax manager did not have authority to make the decision not to pursue the issue. It is for these reasons, and the fact that the petitioner has historically treated the partnership as nonunitary and historically allocated the partnership income and deductions to those states in which the partnership was transacting business, including Idaho, which the petitioner relies upon as unique circumstances warranting the approval of its refund claim.

IV. LAW AND ANALYSIS

A. Idaho Statutes

Idaho Code section 63-3072 states, in pertinent part:

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) Except in regard to amounts . . . paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(c) With regard to amounts . . . paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund shall be made within three (3) years from the due date of the

return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid. . . .

(i) The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 . . . , Idaho Code, and the final resolution of any proceeding resulting from the notice.

(j) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code. . . .

Idaho Code section 63-3045 states, in pertinent part:

63-3045. Notice of redetermination or deficiency—Interest.

(1)(a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. **Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency. . . .**

(5) **If the taxpayer does not file a protest with the state tax commission within the time prescribed in subsection (1)(a) of this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the state tax commission.** (Emphasis added.)

Idaho Code section 63-3045B(1) states, in pertinent part, "If a taxpayer does not file a protest within the sixty-three (63) day period allowed, **the notice of deficiency of the tax commission becomes final on the day following the end of the protest period.**" Emphasis added.

V. Commission Findings

Issue 1 – Unique Circumstances/Prior Notice of Deficiency Determination

It is undisputed that the petitioner filed the amended return for tax year 2003 within the statute of limitations period for the filing of a refund claim under Idaho Code sections 63-3072(b) and (c). It is also undisputed that in September of 2005, the Commission issued a Notice of Deficiency Determination involving the petitioner's tax year 2003 and that the petitioner did not file a petition for redetermination within the required sixty-three days as required by Idaho Code section 63-3045(1)(a). The question to be addressed is whether or not the petitioner is entitled to a refund of taxes on an issue that the Commission specifically addressed in its Notice of Deficiency Determination dated September 1, 2005; a finding upon which the petitioner did not file a petition for redetermination within the required sixty-three days.

Neither Idaho Code section 63-3045 nor 63-3072 explicitly addresses the question before the Commission; however, Idaho Income Tax Administrative Rule 880.04 does address the issue where it states:

04. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination.

Rule 880.04 is consistent with a 1987 5th Judicial Idaho District Court decision in *First Federal Savings & Loan Association of Twin Falls v. Commission*, case number 38810 (decided April 23, 1987, copy attached), in which it stated, in pertinent part:

I.C. Sec. 63-3045 provides that the tax commission "shall, immediately upon discovery [of a deficiency] send notice of such deficiency to the taxpayer by registered or certified mail. Within

thirty (30) days after such notice is mailed (not counting Sunday as the 30th day), the taxpayer may, at his option, file a protest with the State Tax Commission” It is also provided that if a taxpayer does not timely protest the deficiency determination, “the deficiency shall be assessed and shall become due and payable upon notice and demand from the State Tax Commission.” I.C. Sec. 63-3045(b).

These code sections provide that the tax commission must give notice “to the taxpayer.” . . . All that the tax commission need do is give notice to the taxpayer. The tax commission has done this, and the notice given specifically stated that any protest must be filed within 30 days. First Federal failed to do so, and, therefore, is barred from challenging the determination.

First Federal has attempted to circumvent this result by filing an amended return. First Federal seeks to do indirectly what it clearly cannot do directly. To uphold First Federal’s amended returns would render I.C. Sec. 63-3045 almost meaningless, because after the 30-day period had run, anyone could challenge the deficiency ruling by merely amending a return. Therefore, the decision of the tax commission which found that First Federal was foreclosed from challenging this determination is affirmed.

Like the court in *First Federal*, the Commission finds that to allow the petitioner to file an amended return for 2003 after the nonbusiness income issue had been previously addressed in the September 15, 2005, Notice of Deficiency Determination, would render the sixty-three day requirement found in Idaho Code section 63-3045 meaningless. The Bureau’s disallowance of the petitioner’s refund claim is upheld.

Issue 2 – Gain on Sale of Partnership

The Commission need not address this issue given its finding on Issue 1 approving the denial of the refund claim.

WHEREFORE, the Notice of Deficiency Determination dated December 20, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this ____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2008, 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.
