

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21151
[REDACTED])	
Petitioner.)	DECISION
)	
)	
)	

On March 31, 2008, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (Audit) issued a Notice of Deficiency Determination to [Redacted] (petitioner) proposing additional income tax and interest for tax year 2004 in the total amount of \$225,667. The petitioner filed a timely petition for redetermination. A hearing was held on September 4, 2008. The Commission, having reviewed the file, hereby issues its decision.

The petitioner is an S corporation incorporated outside of Idaho. The petitioner is transacting business within Idaho and, as such, the petitioner, in accordance with Idaho Code section 63-3030(a)(4), filed an Idaho income tax return.

All of the petitioner’s shareholders are individuals; none of which are domiciled in Idaho. As a result of the petitioner transacting business within Idaho, under Idaho Code section 63-3026A, all of the petitioner’s shareholders have income attributable to them that is derived from or related to sources within Idaho.

The Idaho source gross income attributable to each of the petitioner’s shareholders exceeded the filing requirement for the filing of an Idaho individual income tax return as specified in Idaho Code section 63-3030(a)(2); therefore, each shareholder was required to file an Idaho individual income tax return and determine their Idaho taxable income in accordance with Idaho Code section 63-3026A.

Rather than file an Idaho income tax return, each of the petitioner's shareholders made the election in Idaho Code section 63-3022L (63-3022L) to have the Idaho tax relating to the Idaho source income reported and paid by the petitioner. Income subject to an election under 63-3022L is taxed at the corporate rate. The petitioner claimed \$375,080 of Idaho Code section 63-3029B Idaho investment tax credit as an offset against the tax.

Audit reviewed the petitioner's Idaho return and issued a Notice of Deficiency Determination on March 31, 2008, disallowing \$187,712 of the \$375,080 investment tax credit. Audit relied upon its interpretation of Idaho Income Tax Administrative Rule 790.03 as authority for the adjustment.

The petitioner filed a petition for redetermination on May 7, 2008, protesting the disallowance of the investment tax credit citing as authority for allowing the disputed credit Idaho Income Tax Administrative Rule 785.06.

A hearing was held on September 4, 2008. At the hearing, the petitioner again cited the language in Rule 785.06 as authority for allowing the credit in dispute but did concede that the \$187,712 amount was overstated by \$5,670.

The Commission reviewed the petitioner's argument as stated in its petition for redetermination, audit's position as articulated in its Notice of Deficiency Determination, numerous other arguments raised during the redetermination process, and has concluded that the petitioner, based upon the language found in Rule 785, is entitled to claim the disputed credit in the amount of \$182,042 (\$187,712 less the \$5,670 adjustment) in the calculation of the 63-3022L tax.

WHEREFORE, the Notice of Deficiency Determination dated March 31, 2008, is hereby MODIFIED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$5,670	\$1,376	\$7,046

Interest is calculated through December 31, 2008, 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.

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]

Receipt No.
