

partnership that dissolved on not so good of terms. He stated he has been trying to get information from the accounting firm that prepared the partnership's returns but has had little success. He attributes this to his lack of history [Redacted] and his ex-partners extensive history [Redacted]. The taxpayer stated he would provide documentation to show what his income was in 2004.

The Bureau allowed the taxpayer additional time to provide the documentation or to file his returns, but when nothing was received, the Bureau referred the matter for administrative review. The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer did not respond to the Tax Commission's letter, so a follow-up letter was sent to the taxpayer. Still, the taxpayer failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

[Redacted]. LLCs are flow-through entities whereby all items of income and expense flow through to the members of the LLC. [Redacted] filed and reported its income/loss as a 100 percent Idaho partnership. Therefore, the taxpayer was required to report his share of [Redacted] income or loss to Idaho on his individual income tax return. According to [Redacted] schedule K-1 for the taxpayer, the taxpayer received a guaranteed payment in addition to his share of [Redacted] business income/loss. Both of these amounts are reportable on the taxpayer's individual income tax return. However, in addition to reporting the flow-through items [Redacted], another taxable event occurred because [Redacted] liquidated (ceased operations and distributed its assets and liabilities) in 2004.

LLCs have an option on how they are treated for tax purposes. In this case, [Redacted] elected to be treated as a partnership; therefore, [Redacted] had to follow the rules for partnership

liquidation. When [Redacted] liquidated, the taxpayer had a capital account with a negative balance. Generally, this signifies that the partner has little or no basis in the partnership and would require an infusion of capital (cash) if the partnership dissolved or liquidated. When a partnership liquidates, all its assets and liabilities are distributed to the partners according to the profit and loss sharing percentage of the partnership agreement. Under partnership law, if a partner is relieved of his share of the partnership's liabilities, that partner is deemed to have received a distribution of money from the partnership. (Internal Revenue Code (IRC) section 752(b).)

[Redacted] 2004 return shows that there was capital contributed to satisfy the debts [Redacted]. However, none of the capital contributed was attributed to the taxpayer. In other words, the taxpayer was left with a negative balance in his capital account. The negative balance represents the taxpayer's share of [Redacted] losses and liabilities from past years. When [Redacted] liquidated, the taxpayer was liable for his share of [Redacted] liabilities for the past and current years. However, it appears that, when the liquidation was completed, the taxpayer did not assume his share of [Redacted] liabilities. Since the taxpayer was relieved of his share of [Redacted] liabilities, he is deemed to have received a cash distribution [Redacted]; whether he actually received it or not. See IRC section 752. Therefore, the taxpayer had a taxable gain on the liquidation [Redacted].

The return the Bureau prepared for the taxpayer reported the business activity [Redacted] and the gain [Redacted] liquidation. In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Other than his statements in his initial protest, the taxpayer has

failed to show the Bureau's determination was incorrect. The Tax Commission reviewed the return prepared by the Bureau and found that it was prepared from the available information for the taxable year 2004. Based upon that information, the Tax Commission finds the return the Bureau prepared for the taxpayer is a reasonable representation of the taxpayer's Idaho taxable income for 2004. Therefore, the Tax Commission upholds the Bureau's determination.

The Bureau added interest and penalty to the taxpayer's Idaho tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

WHEREFORE, the Notice of Deficiency Determination dated January 3, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (computed to April 15, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$18,453	\$4,613	\$4,744	\$27,810

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 _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
