

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

In the Matter of the Protest of )  
 ) DOCKET NO. 21452  
[REDACTED] )  
 ) DECISION  
Petitioner. )  
\_\_\_\_\_ )

On July 30, 2008, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable year 2003 in the total amount of \$7,959.

On September 30, 2008, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold Idaho property in 2003. The Bureau researched the Tax Commission’s records and found that the taxpayer did not file an Idaho income tax return for that year. The Bureau sent the taxpayer letters asking about its requirement to file an Idaho income tax return. The taxpayer did not respond. The Bureau determined the taxpayer was required to file an Idaho income tax return, so the Bureau prepared a return based upon the property sales information and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau’s determination. The taxpayer stated it hired an accounting firm to look into the matter and file the necessary return. The taxpayer stated the property was sold to a member at a loss and it was an oversight that an Idaho income tax return was not filed. The taxpayer stated a return would be prepared and filed in a timely manner.

The Bureau allowed the taxpayer a significant amount of time to submit its return. However, when nothing was received and the taxpayer stopped corresponding with the Bureau, the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer contacted the Tax Commission and stated it would either file a return or provide information on the purchase and sale of the property. Thirty days later, the taxpayer had not provided anything, so the Tax Commission sent the taxpayer a letter giving it a final date on which to provide its return or information. The taxpayer did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

Idaho Code section 63-3026A states in part that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real property located in Idaho. Idaho Code section 63-3030 states in part that any corporation, S-corporation, or partnership which transacts business in Idaho or has income attributable to Idaho shall file an Idaho income tax return.

The taxpayer sold property located in Idaho. The selling price of the property was \$68,000. The taxpayer did not provide any information or documentation to establish a basis in the property, so it is unknown how much of a gain or loss the taxpayer realized on the sale of the property. Nonetheless, it is known that the taxpayer received \$68,000 on the sale of the property, and this sale of Idaho property generated income attributable to Idaho. Therefore, the Tax Commission finds the taxpayer did have a filing requirement with the state of Idaho.

The taxpayer stated the sale of the property was a loss to the taxpayer. However, the taxpayer did not provide anything to show that it sustained a loss on the sale. 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). The taxpayer did not meet its burden. Therefore, the Tax Commission upholds the Bureau's determination of taxable income.

Generally, a limited liability company (LLC) is a pass-through entity which flows its taxable income to its members and the members report their respective share of the LLC's income on their income tax returns. In this case, the Tax Commission has very little information on the LLC's members. According to the Tax Commission's records, the taxpayer has two members. One of the taxpayer's members filed a 2003 Idaho individual income tax return, but did not report being a member of the taxpayer. The Tax Commission has no information on the taxpayer's other member for 2003.

Idaho Code section 63-3022L provides that when a member of an LLC fails to file an Idaho income tax return that reports the Idaho taxable income of the LLC, the LLC can be held liable for the tax, at the corporate rate, on the unreported income. Since nothing is known about the taxpayer's members' ownership interests, and considering that the member who filed an Idaho income tax return did not report any involvement with the taxpayer, the Tax Commission made the assumption the sale of the Idaho property was attributed to the non-filing member of the taxpayer. Since the non-filing member did not file an Idaho income tax return, and it is unknown whether he was an Idaho resident or nonresident in 2003, the Tax Commission finds that Idaho Code section 63-3022L(3) is applicable and upholds the tax on the taxpayer.

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.

WHEREFORE, the Notice of Deficiency Determination dated July 30, 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 May 5, 2010):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$5,178	\$1,295	\$1,915	\$8,388

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, 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.