

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21540
[Redacted],)	
)	
Petitioner.)	DECISION
)	
_____)	

[Redacted], (taxpayer) protested the Notice of Deficiency Determination issued by the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission dated September 10, 2008. The Notice of Deficiency Determination asserted a penalty for failing to file Idaho partnership returns for taxable years 2000 through 2006 in the total amount of \$700.

The taxpayer is a limited liability company (LLC) that was registered with Idaho's Secretary of State in 2000 through 2006. The Bureau found from information obtained [Redacted] that the taxpayer reported paying wages to employees in each of the years 2000 through 2006. The Bureau researched the Tax Commission's records and found that the taxpayer did not file Idaho income tax returns for those years. The Bureau sent the taxpayer a letter asking about its requirement to file Idaho income tax returns. When the taxpayer failed to respond, the Bureau sent another letter asking it to file income tax returns for the years 2000 through 2006. The taxpayer did not respond to either letter.

The Bureau determined the taxpayer was required to file Idaho business income tax returns for 2000 through 2006. The Bureau prepared returns for the taxpayer based upon a calculation of income determined from wages paid and sent it a Notice of Deficiency Determination. Since the taxpayer was a flow-through entity, the Bureau's determination consisted of the application of the penalty for failing to file informational returns, Idaho Code section 63-3046B.

The taxpayer protested the Bureau's determination stating the returns the Bureau prepared do not reflect an accurate picture of its income. The taxpayer stated there were a variety of reasons the returns were not filed; however, it was now in a position to turn all its documents over to its accountant for the proper returns to be prepared. The Bureau allowed the taxpayer additional time to submit its returns, but when no returns were 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 requested a hearing, but when the time came for the hearing, the taxpayer's representative and the Tax Commission staff concluded the hearing would be fruitless if the taxpayer did not have any returns to provide. The taxpayer's representative stated she would have at least one year's return to the Tax Commission by the middle of the following week. So the hearing was cancelled in favor of having a return submitted the following week.

The Tax Commission did not receive the return as stated. It was not until a month later that the Tax Commission received a copy of the taxpayer's federal partnership return for taxable year 2000. The taxpayer's Idaho return was not included. The taxpayer's representative and the Tax Commission traded phone messages, but no other returns were provided. The Tax Commission sent the taxpayer a letter giving it a final date to provide its returns. The taxpayer did not respond or provide the needed returns. The Tax Commission, believing the taxpayer has had ample time to prepare and submit its income tax returns, hereby issues its decision.

The taxpayer is an LLC which is a flow-through entity for income tax purposes. An LLC is required to file a return of income reporting its income or loss for its taxable year. Since the LLC's income flows through to its members, the LLC generally has no income tax liability.

However, if the LLC fails to file a return and report the information required by Idaho Code section 63-3030, the LLC is subject to the penalty provided in Idaho Code section 63-3046B.

Idaho Code section 63-3046B states:

[I]f any partnership required to file a return under section 63-3030, Idaho Code, for any taxable year:

(1) Fails to file such return at the time prescribed therefor by section 63-3030, Idaho Code, (determined with regard to any extension of time for filing); or

(2) Files a return which fails to show the information required under section 63-3030, Idaho Code, such partnership shall be liable for a penalty determined under subsection (b) of this section for each month (or fraction thereof) during which such failure continues (but not to exceed five (5) months), unless it is shown that such failure is due to reasonable cause.

(b) Amount per month. For purposes of subsection (a) of this section, the amount determined under this subsection for any month is the product of:

(1) Ten dollars (\$10.00), multiplied by

(2) the number of persons who are partners in the partnership during any part of the taxable year, except that in the case of partnerships with no business activity in Idaho during the taxable year but with partners who are Idaho residents, multiply the amount in subsection (b)(1) of this section by the number of partners who are either Idaho residents or are persons other than individuals who are transacting business in Idaho.

(c) Assessment of penalty. The penalty imposed in subsection (a) of this section shall be assessed against the partnership.

The taxpayer transacted business in Idaho as evidenced by the wages it reported to [Redacted]. The taxpayer also did not contest its requirement to file Idaho income tax returns. The taxpayer provided a copy of the partnership return it filed [Redacted] for taxable year 2000, thereby identifying the entity form and the number of partners. The taxpayer's federal return also provided evidence that the taxpayer was transacting business in Idaho. Therefore, the Tax Commission found that based upon the information available and the taxpayer's apparent concession of its requirement to file Idaho returns of income, the taxpayer was required to file Idaho partnership income tax returns for taxable years 2000 through 2006.

Since the taxpayer failed to file Idaho partnership returns to report the required information of Idaho Code section 63-3030, the penalty of Idaho Code section 63-3046B is

applicable. And since the taxpayer has not shown reasonable cause for not filing its Idaho returns, the Tax Commission finds the application of the penalty appropriate. Therefore, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated September 10, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following penalty computed monthly for two partners at \$10 each for five months:

<u>YEAR</u>	<u>PENALTY</u>	<u>TOTAL</u>
2000	\$100	\$100
2001	100	100
2002	100	100
2003	100	100
2004	100	100
2005	100	100
2006	100	<u>100</u>
	TOTAL DUE	<u>\$700</u>

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.
