

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21541
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On September 10, 2008, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable years 2000 through 2006 in the total amount of \$60,680.

On November 7, 2008, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a hearing which was scheduled for June 10, 2010, but was later cancelled because the taxpayer's returns were not completed. The taxpayer stated he would provide his income tax returns, but no returns were provided, and no other information was furnished for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer is a member partner [Redacted]. The Tax Discovery Bureau (Bureau) determined the taxpayer received income [Redacted] and found that the taxpayer did not file Idaho individual income tax returns for taxable years 2000 through 2006. The Bureau prepared income tax returns for the taxpayer based upon its determination [Redacted] flow-through income and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. The taxpayer stated the Bureau's returns did not reflect an accurate picture of his tax liability. The taxpayer stated he had considerable information pertaining to his personal deductions, actual income, and company

losses and gains that need to be factored into his tax liability. The taxpayer stated that due to a variety of reasons his returns were not filed but he was now at a point where he could provide all his documents and information to his accountant to have the proper returns prepared.

The Bureau allowed the taxpayer additional time to provide the needed returns, but no returns were provided. Therefore, 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 hand delivered copy of [Redacted] 2000 federal partnership return. Since that time, 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 him a final date to provide the remaining returns. The taxpayer did not respond or provide his returns. The Tax Commission, believing the taxpayer has had ample time to prepare and submit his income tax returns, hereby issues its decision.

The taxpayer is a member of a limited liability company (LLC) that transacted business in Idaho during the years in question. LLCs are flow-through entities for income tax purposes. In its decision for Docket No. 21540, the Tax Commission found that Murillo had income that flowed through to its member partners. The taxpayer is a 49 percent owner/partner [Redacted].

Therefore, 49 percent of [Redacted] income or loss flowed through to the taxpayer and is required to be reported on his individual income tax return.

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 income tax return provided for [Redacted] 2000 taxable year reported a flow through loss from the LLC. The Tax Commission reviewed the [Redacted] return and found it better represented the flow-through income/loss the taxpayer experienced [Redacted] than the income determined by the Bureau. Therefore, the Tax Commission adjusted the return the Bureau prepared for the taxpayer for taxable year 2000 to reflect the flow-through income/loss shown on [Redacted] 2000 federal partnership return.

However, with regard to the taxpayer's 2001 through 2006 income tax returns, the taxpayer has not met his burden. Therefore, the Tax Commission finds that the returns the Bureau prepared for 2001 through 2006 are a reasonable representation of the taxpayer's Idaho taxable income, with the exception that the flow-through income [Redacted] should be 49 percent of the income rather than 50 percent.

WHEREFORE, the Notice of Deficiency Determination dated September 10, 2008, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$ 0	\$ 0	\$ 0	\$ 0
2001	2,374	594	1,243	4,211
2002	2,670	668	1,227	4,565
2003	4,428	1,107	1,800	7,335
2004	7,080	1,770	2,454	11,304
2005	8,017	2,004	2,294	12,315
2006	15,685	3,921	3,503	<u>23,109</u>
			TOTAL DUE	<u>\$62,839</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.
