

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

In the Matter of the Protest of )  
 ) DOCKET NO. 21965  
[Redacted] )  
 ) DECISION  
 )  
Petitioners. )  
\_\_\_\_\_ )

On April 1, 2009, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioners) proposing additional income tax, penalty, and interest for taxable year 2004 in the total amount of \$28,993. The petitioners filed a timely protest and petition for redetermination. The Idaho Code section 63-3045(2) hearing was held on March 18, 2010. The Commission, having reviewed the file, hereby issues its decision.

When the petitioners filed their Idaho income tax return for taxable year 2004, the petitioners claimed the following itemized deductions in arriving at their Idaho taxable income:

**Table 1 - Itemized Deductions per Return Filed:**

Taxes:	
State and local taxes	\$14,941
Real estate taxes	1,417
Contributions	299,826
Itemized deduction phase-out adjustment	29,499
Total Itemized Deductions Claimed	<u>\$286,685</u>

The [Redacted] audited the petitioners’ [Redacted] return for taxable year 2004 and disallowed all but \$1,700 of the petitioners’ \$299,826 charitable contributions. The petitioners, as of the date of this decision, have submitted an “Offer in Compromise” [Redacted] seeking to resolve their 2004 [Redacted] liability through settlement.

Since the petitioners have failed to provide the Commission with a copy of the [Redacted] audit report, the ITA obtained a copy of the federal audit report [Redacted].

ITA made the following adjustments to the petitioners' Idaho taxable income based upon the federal audit report adjustments:

<b>Table 2 – Idaho Taxable Income:</b>	
Idaho taxable income as reported	\$291,946
ITA adjustments:	
Reverse itemize deductions	286,685
Reverse impact on state tax addback	(14,306)
Standard deduction	<u>(9,700)</u>
Idaho taxable income as adjusted	<u><u>\$554,625</u></u>

As a result of the disallowance of the charitable contributions [Redacted], for Idaho income tax purposes, the standard deduction of \$9,700 was greater than the remaining itemized deductions after making the Idaho Code section 63-3022(j) adjustment for state and local taxes.

It is the Commission's understanding that the [Redacted] found that an entity created by or for the petitioners did not qualify as a tax exempt charitable trust, thus the petitioners' sizable contribution to the trust did not qualify as a charitable deduction. In the petition for redetermination, the representative stated that they "were in the process of compiling documentation proving the legitimacy of the charitable trust and tax exempt status." During the informal hearing, the petitioners' representative conceded to the [Redacted] adjustment to the petitioners' charitable contribution. Instead, the representative focused on another transaction that happened subsequent to taxable year 2004.

Sometime after taxable year 2004, since the trust did not qualify as a tax exempt entity, the petitioners moved their money from the trust into an investment fund, which in 2008 or 2009 turned out to be a "Ponzi scheme" resulting in the loss of the petitioners' investment. While it is regrettable that the petitioners were a victim of a Ponzi scheme; that fact does not alter their underpayment of their Idaho liability for taxable year 2004.

As of the date of this decision, the petitioners have not provided any information that would resolve this case in the petitioners' favor for taxable year 2004. It is the petitioners' burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioners have not met this burden of proof showing that the NODD prepared by the ITA for taxable year 2004 is incorrect, the Commission upholds the ITA's determination for taxable year 2004.

Interest was included in the NODD in accordance with Idaho Code section 63-3045(6), as was the Idaho Code section 63-3046(a) 5 percent negligence penalty for failure to immediately send written notice to the Commission of the final determination of the petitioners' federal tax as required by Idaho Code section 63-3069 and the Idaho Code section 63-3046(d) 10 percent substantial underpayment penalty.

WHEREFORE, the Notice of Deficiency Determination dated April 1, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$20,491	3,074	6,807	\$30,372

Interest is calculated through October 15, 2010, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6)(c).

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

An explanation of the petitioners' rights 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.

\_\_\_\_\_