

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22463
[Redacted])	
)	DECISION
Petitioner.)	
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On August 20, 2009, the Idaho State Tax Commission's (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing additional income tax, penalty, and interest for taxable years 2005 and 2006 in the total amount of \$73,487.

The petitioner filed a timely petition for redetermination. The petitioner was informed of its appeal rights.

The Commission, having reviewed the file, hereby issues its decision.

The petitioner had an active Idaho sales tax permit and an active Idaho withholding permit during taxable years 2003 through 2006. The TDB determined, based upon a review of the Commission's records, that the petitioner had an Idaho income tax filing requirement and had not filed an Idaho corporate income tax return for taxable years 2003, 2004, 2005, and 2006.

The TDB was successful in procuring from the petitioner, prior to the issuance of the NODD, the petitioner's Idaho corporate income tax return for taxable years 2003 and 2004. After several unsuccessful attempts to acquire the remaining Idaho corporate income tax returns, the TDB issued the NODD on August 20, 2009, for taxable years 2005 and 2006. In the NODD, the TDB calculated the petitioner's Idaho tax liability for these years as follows:

Table 1 – Calculation of Tax Liability

Taxable Year	2005	2006
Sales per Idaho sales tax return	\$1,304,598	\$1,266,561
Payroll per Department of Labor	-434,866	-422,187
Cost of goods sold (estimate)	-331,498	-321,833
Net income subject to apportionment	538,234	522,541
Idaho apportionment factor	100%	100%
Income apportioned to Idaho	538,234	522,541
Income allocated to Idaho	0	0
Idaho net operating loss	0	0
Idaho taxable income	\$538,234	\$522,541
Idaho income tax	\$40,906	\$39,713
Permanent building fund tax	10	10
Estimated tax payments	-14,635	-15,100
Net tax due	\$26,281	\$24,623

Interest was included in the NODD in accordance with Idaho Code section 63-3045. A penalty was also included for failure to file an Idaho income tax return per Idaho Code Section 63-3046(c)(1). The penalty percentage is 5 percent per month with a maximum rate of 25 percent.

In the petitioner's petition for redetermination dated October 19, 2009, the petitioner does not deny that it was required to file an Idaho income tax return for taxable years 2005 and 2006. Instead, the petitioner listed its taxable income, tax amount, estimated payments, and overpayments for taxable years 1998 through 2004 in order to show that it never had a tax liability as large as that shown in the NODD for taxable years 2005 and 2006. Additionally, the petitioner stated that it still was in the process of preparing Idaho income tax returns for taxable years 2005 and 2006.

In April 2010, the petitioner filed its Idaho corporate income tax return for taxable year 2005. Therefore, the petitioner's Idaho taxable income for taxable year 2005 is hereby accepted in lieu of the return prepared by the TDB as shown in the NODD. The petitioner's

2005 Idaho corporate income tax return will be treated by the Commission as a late filed return and is subject to the normal review process of the Commission.

As of the date of this decision, the petitioner has not filed its Idaho income tax return for taxable year 2006 or provided information that would resolve this case in the petitioner's favor. It is the petitioner's 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 petitioner has not met this burden of proof of showing that the NODD prepared by the TDB for taxable year 2006 is incorrect, the Commission upholds the TDB's determination as shown in the NODD.

WHEREFORE, the Notice of Deficiency Determination dated August 20, 2009, is hereby MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$24,623	\$6,156	\$4,178	\$34,957

Interest has been updated and is calculated through December 31, 2010, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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 _____ 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.
