

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22507
[Redacted],)	
[Redacted] Petitioner.)	DECISION
)	
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated October 7, 2009, asserting additional liabilities for Idaho income tax, penalty, and interest in the total amounts of \$1,847, \$137, and \$30 for 2005, 2006, and 2007, respectively.

The petitioner did not file Idaho income tax returns for any of the years for which a liability was asserted. He held an interest both in [Redacted] (the corporation), and in [Redacted] (the partnership) during 2005, 2006, and 2007. Both the corporation and the partnership reported Idaho apportionment factors of 100 percent for all years here in issue.

The auditor contacted the petitioner regarding his failure to file Idaho income tax returns. The petitioner did not respond, therefore the Notice of Deficiency Determination was issued. After the auditor issued the Notice of Deficiency Determination, the petitioner submitted returns on which he reflected some of his Idaho source income. The petitioner failed to report other portions of his income from both the corporation and from the partnership. He cited no authority for these omissions.

Idaho Code § 63-3026A stated, in part:

Computing Idaho taxable income of part year or nonresident individuals, trusts and estates. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or

itemized deductions or personal exemptions except as provided in subsection (4) of this section.

* * *

- (3) For the purposes of subsections (1) and (2) of this section:
 - (a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:
 - (i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

There was no discernable pattern to the income reported by the petitioner as Idaho source income. The ordinary income from the partnership was reported for each of the years while the ordinary income from the corporation was reported as Idaho source income only for 2007. The petitioner's share of the income from both the partnership and the corporation included interest income for each of the years. Only the interest income of the partnership for 2005 and 2006 was reported as Idaho source income. The petitioner's share of the income of the corporation included a deduction pursuant to Internal Revenue Code § 179¹ for each of the years. Only the amount for 2007 was reflected as an Idaho item. Long term capital gain from the partnership was reported as Idaho source income for 2005, but a long term capital loss for 2007 was not reported as an Idaho source loss. There were other inconsistencies in the income reported as Idaho source income.

The petitioner raised no argument either that the income in question was not reportable as Idaho source income or that he was not required to file Idaho income tax returns. The Commission finds that the auditor correctly determined the amounts of the petitioner's income that should have been classified as Idaho source income.

¹ Election to expense certain depreciable business assets.

For 2005, the petitioner claimed a credit for taxes paid another state. The explanation was that the petitioner had reported all of his income to [Redacted] The statute of limitations for the petitioner to claim a refund of the tax incorrectly paid to Utah had expired. Therefore, the petitioner felt that Idaho should allow him a credit for the taxes incorrectly paid to the [Redacted]. He cited no authority to support his position.

The auditor did not allow this credit claimed by the petitioner. Idaho Code § 63-3029 sets out the authority for the credit for taxes paid another state. There is no provision for a credit to be allowed to a nonresident of the state of Idaho. Accordingly, this credit was properly denied by the auditor.

For 2007, the petitioner's portion of the partnership items included qualification for an investment tax credit. This credit was not claimed by the petitioner. It was correctly allowed by the auditor.

The Commission finds that the auditor properly included the proper attributes both from the partnership and from the corporation. Accordingly, the Commission finds that the auditor's determination of the petitioner's Idaho taxable income and tax liability should be affirmed.

The returns filed by the petitioner did not include penalty or interest. The auditor asserted the delinquency penalty and interest. The authority for the penalty asserted by the auditor is provided by Idaho Code § 63-3046(c)(1):

In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such returns for each month elapsing after the due date (including extensions) of such returns until the return is filed.

Authority for the interest imposed is set out in Idaho Code § 63-3045(6)(b):

Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under

the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax.

The Commission finds that the penalty and interest were properly asserted by the auditor.

WHEREFORE, the Notice of Deficiency Determination dated October 7, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (computed to June 30, 2010):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$1,248	\$312	\$322	\$1,882
2006	96	24	20	140
2007	18	10	2	<u>30</u>
				\$2,052
			Less payment	<u>(152)</u>
			Amount Due	<u>\$1,900</u>

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] _____