

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22587
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated December 8, 2009, asserting an additional liability for Idaho income tax, penalty, and interest in the total amount of \$3,078 for taxable year 2006.

The petitioner was audited [Redacted]. The auditor for the Commission adjusted the petitioner's Idaho taxable income to reflect the addition to [Redacted].

The petitioner contends that he is going to change his accounting method for 2006 from cash to accrual to move some of his deductions from later years into 2006. Changes in accounting method are addressed in Treasury Regulation 1.446(e)(3)(i) which states, in part:

Except as otherwise provided under the authority of paragraph (e)(3)(ii) of this section, to secure the Commissioner's consent to a taxpayer's change in method of accounting the taxpayer must file an application on Form 3115 with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting.

Since it appears that the petitioner would need to have been granted permission [Redacted] for the change in accounting method sought by the petitioner, the Commission asked the petitioner to submit a copy of the approval [Redacted]. None was provided. No supporting argument or authority was provided. Therefore, the Commission now renders this opinion based upon the information in the file.

The information received [Redacted] appears to confirm that the result of the [Redacted] audit has not been changed. Further, the petitioner wishes to deduct items in 2006 which were previously deducted in 2007 or later. The burden of proof with regard to deductions is upon the taxpayer. The Idaho Supreme Court stated, with regard to such an issue:

When construing the provisions of the Idaho Income Tax Code, however, we must enforce the law as written. Potlatch Corp. v. Idaho State Tax Comm'n, 128 Idaho 387, 913 P.2d 1157 (1996). If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. *Id.* This Court has no authority to rewrite the tax code. Bogner v. State Dep't of Revenue and Taxation, 107 Idaho 854, 693 P.2d 1056 (1984). Any exemption from taxation must be created or conferred in clear and plain language and cannot be made out by inference or implication. Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964). This Court does not have the authority to create deductions, exemptions, or tax credits. If the provisions of the tax code are socially or economically unsound, the power to correct it is legislative, not judicial. *Id.*

Idaho State Tax Commission v. Stang, 135 Idaho 800, 802 – 803 (2001).

The Commission finds that the petitioner has failed to carry his burden of proof that he is entitled to the deductions sought.

WHEREFORE, the Notice of Deficiency Determination dated December 8, 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 August 31, 2010):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$2,511	\$126	\$510	\$3,147

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.