

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 23158  
Petitioner. )  
DECISION  
\_\_\_\_\_ )

On May 17, 2010, the staff of the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable year 2008 in the total amount of \$7,743.

On July 18, 2010, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing or provide additional information for the Commission's consideration other than that contained in the appeal. The Commission, having reviewed the file, hereby issues its decision.

During a routine review of business returns filed with the Commission, the Bureau found that the taxpayer, a partner of [Redacted] (Partnership), did not file Idaho individual income tax returns for taxable year 2008. The Partnership filed schedule K-1s for each of its two partners showing an income apportionment percentage to Idaho of 100 percent. The taxpayer did not share in the Partnership's profit, but he did receive a guaranteed payment for taxable year 2008.

The Bureau attempted to contact the taxpayer for an explanation of why his 2008 Idaho individual income tax return had not been filed, but he did not respond to the inquiries. Therefore, the Bureau prepared a return for the taxpayer based upon the information available and sent the taxpayer an NODD.

The taxpayer protested the Bureau's determination stating the schedule K-1 falsely reported his income. The taxpayer's file was sent to the Legal/Tax Policy Section for administrative review.

The tax policy specialist sent the taxpayer a letter giving him the option of two methods for having the NODD redetermined. The taxpayer did not respond. A follow-up letter, sent by the tax policy specialist, also went unanswered. Therefore, the Commission decided the matter based upon the information available.

For taxable year 2008, the Partnership transacted 100 percent of its business activities in Idaho. (Idaho apportionment factor reported on the Idaho Partnership return.) Idaho Code section 63-3030(a)(9) states that returns with respect to taxes measured by income shall be made by every partnership which transacts business in Idaho. IDAPA 35.01.01.280 states that partnerships operating both within and without Idaho shall apply the principles of allocation and apportionment of income set forth in Idaho Code section 63-3027. However, since the partnership operated solely within Idaho, all income is allocated and apportioned to Idaho.

Partnerships are flow-through entities (Internal Revenue Code (IRC) section 701). In general, each partner accounts for his distributive share of the partnership's gains and losses, charitable contributions, taxes, and income or loss. (IRC section 702.) In determining the income or loss of a partnership, guaranteed payments are treated as made to a person who is not a partner. However, for other tax purposes, guaranteed payments are treated as a partner's distributive share of ordinary income. (Treasury Regulation section 1.707-1(c).) Since guaranteed payments are a distributive share of ordinary income and the partnership allocated and apportioned 100 percent of its income to Idaho, the taxpayer was required to file and report the partnership income to Idaho.

An NODD issued by the Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). Having presented no information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The taxpayer has provided nothing that would dissuade the Commission from accepting the Bureau's determination of Idaho income and Idaho income tax for taxable year 2008. The penalty and interest additions were calculated in conformity with Idaho Code §§ 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated May 17, 2010, is hereby 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>
2008	\$5,896	\$1,474	\$531	\$7,901

Interest is calculated through February 8, 2011.

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

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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.