

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22343
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated September 16, 2009, asserting additional liabilities for Idaho income tax, penalty, and interest in the total amounts of \$9,274 and \$1,001 for 2005 and 2006, respectively.

The petitioners did not file Idaho income tax returns for 2005 or 2006. Based, in part, on the petitioners having been shareholders in [Redacted], an S-corporation doing business in Idaho, the Commission staff inquired of the petitioners as to why they had failed to file these income tax returns. In response, the petitioners filed Idaho income tax returns. The auditor then made adjustments to the original returns filed by the petitioners. These adjustments led to the Notice of Deficiency Determination referred to above. The adjustments include the following:

1. The adjustment of expenses related to the business of [Redacted],
2. The disallowance of a claimed loss from the sale of an [Redacted],
3. The addition of non-employee compensation not reported by the petitioners,
4. The adjustment of a claimed capital loss from the disposition of [REDACTED] stock,
5. An adjustment to the claimed moving expense deduction,
6. Adjustments of claimed itemized deductions, and
7. The delinquency penalty of 25 percent was asserted

DISCUSSION

Issue 1. The petitioner contends that he incurred many expenses relating to the business of [Redacted]. These include airplane and auto expenses, travel and entertainment, legal services, utilities, internet usage and others.

The auditor disallowed these deductions contending that the expenses may have been business expenses of [Redacted] had the expenses been paid by the corporation. However, even if they were, the auditor contends that the petitioners may not deduct the business expenses of another entity [Redacted]. The petitioners have not supplied authority to support their position.

In addressing such a situation, the Tax Court stated, in part:

Pursuant to section 162, a deduction is allowed for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business”. In order to be deductible, business expenses generally must be the expenses of the taxpayer claiming the deduction. Gantner v. Commissioner, 91 T.C. 713, 725, 1988 WL 99270 (1988), affd. 905 F.2d 241 (8th Cir.1990); Hewett v. Commissioner, 47 T.C. 483, 488, 1967 WL 1018 (1967). For tax purposes, a corporation is treated as a separate entity from its shareholders. Moline Properties, Inc. v. Commissioner, 319 U.S. 436, 438-439, 63 S.Ct. 1132, 87 L.Ed. 1499 (1943). Furthermore, a shareholder is not entitled to a deduction from his individual income for his payment of corporate expenses. Deputy v. duPont, 308 U.S. 488, 494, 60 S.Ct. 363, 84 L.Ed. 416 (1940); Gantner v. Commissioner, supra. Shareholders cannot deduct as personal expenses such expenses that further the business of the corporation. Leamy v. Commissioner, 85 T.C. 798, 809, 1985 WL 15412 (1985).

Das v. Commissioner, T. C. Memo 1998-353.

The Commission finds that these claimed expenses are not deductible for several reasons. As noted above, we find that the expenses were those of [Redacted], not those of [Redacted]. Also, the petitioners have failed to document that they incurred the expenses in question. If they incurred the expenses, if such expenses were reimbursed or reimbursable by [REDACTED], they would not be deductible by the petitioners. Maher v. Commissioner, T. C. Memo 2003-85. Since the Commission is holding that the expenses in question are not deductible due to their

being those of [Redacted], the other rationales for the disallowance of the claimed deductions do not need to be explored at this time.

Issue 2. The petitioners claimed a loss on the sale of an aircraft. They reported on their income tax return that they purchased the [Redacted] on October 1, 2005, for \$30,995, claimed \$17,775 of depreciation with regard to the [Redacted], and disposed of the [Redacted] on April 1, 2006, with no sales proceeds. They contend that they paid \$13,220 to [Redacted] (or one of its subsidiaries) for an aircraft kit. [Redacted] Corporation filed for bankruptcy, and the petitioners contend that they did not receive the [Redacted] for which they paid. The petitioners submitted a schedule from [Redacted] Corporation's bankruptcy showing a liability to [Redacted] for \$12,500 due to a "Customer Product Order." The amount of \$720 was handwritten on the schedule from the Bankruptcy Court indicating that this was to cover other options. The petitioners did not submit further proof of paying the additional \$720.

From the information provided by the petitioners and additional documentation from the Bankruptcy Court, the Commission has determined that the \$12,500 claimed by the petitioners was paid as deposit and that it was not repaid to the petitioners. Therefore, the Commission finds that the petitioners are entitled to a bad debt deduction in this amount. The Commission further finds that the documentation submitted by the petitioners with regard to the additional \$720 was insufficient to adequately document the expenditure and that the petitions have failed to carry their burden of proof with regard to this amount. The commission, therefore, finds that the petitioners are entitled to a nonbusiness bad debt deduction in the amount of \$12,500.

Issue 4. The petitioners originally claimed that they paid \$12,000 to either [Redacted] or to the remaining stockholders of [Redacted] as a condition of surrendering their stock in [Redacted]. Information the auditor gathered contradicted this assertion. The petitioners

conceded this issue. In addition, the petitioners indicated that they would be submitting their computation of their basis in their stock in [Redacted]. However, no such computation was provided. Therefore, the auditor's disallowance of the loss is sustained.

Issues 5, 6, and 7. No objection was raised by the petitioners to these adjustments.

WHEREFORE, the Notice of Deficiency Determination dated September 16, 2009, is hereby MODIFIED, and as so modified is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to March 31, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$4,948	\$1,237	\$1,446	\$7,631
2006	587	147	134	<u>868</u>
			TOTAL DUE	<u>\$8,499</u>

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

An explanation of the petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.
