

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22690
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated January 29, 2010, asserting additional liabilities for Idaho income tax, penalty, and interest in the total amount of \$279,932 for 2007.

The petitioners had been domiciled in Idaho during the first part of 2007 and prior to 2007. The petitioners contend that they moved to [Redacted]. It appears that they entered into a lease agreement for the lease of property in [Redacted] on November 16, 2007. The petitioners held 2 percent interests in [Redacted] which they sold on November 1, 2007, realizing a substantial gain. The two LLCs filed Idaho income tax returns as partnerships. The petitioners did not report the gain from the sale of the interests in the LLCs as Idaho source income.

The auditor determined that the income from the sale of the LLC interests was Idaho source income pursuant to Idaho Code § 63-33026A(3)(a)(vii) which stated, in part:

The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

Both of the LLCs here in question filed 2006 Idaho income tax returns reporting that they had a 100 percent Idaho apportionment factor. Both entities reported losses for 2006. The petitioners claimed their share of those losses on their individual income tax return. Accordingly, the auditor determined that the entire gain from the disposition of the interests in the LLCs was reportable to Idaho.

The petitioners contend that the LLCs had not begun to operate during 2006 and that, therefore, the LLCs should not have had an apportionment factor and had not begun to “transact business” as set out in Idaho Code § 63-3023 which stated:

Transacting business. Subject only to the limitations of the constitutions of the United States and of the state of Idaho, the term "transacting business" shall include owning or leasing, whether as lessor or lessee, of any property, including real and personal property, located in this state, or engaging in or the transacting of any activity in this state, for the purpose of or resulting in economic or pecuniary gain or profit.

Idaho Code § 63-3030(9) required each partnership which “transacted business” in Idaho to file Idaho income tax returns. The entities filed income tax returns with Idaho, and the partners claimed their share of the losses from those entities. Therefore, the entities made the determination that they were transacting business in Idaho. The petitioners contest this determination even though they claimed their share of the reported losses from the LLCs for 2006.

The Commission finds that the record is sufficiently clear to affirm the determination made by the auditor. “Transacting business” includes “engaging in or the transacting of any activity in this state, for the purpose of or resulting in economic or pecuniary gain or profit.” Clearly the entities were in the process of trying to get all of the necessary permits and agreements to be able to have the [Redacted] operational. The Commission believes that it is not idle speculation that, for this activity, the intent was to produce “a pecuniary gain or profit.”

WHEREFORE, the Notice of Deficiency Determination dated January 29, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to August 15, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$230,591	\$23,059	\$40,300	\$293,950

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.
