

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23406
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protests the Notice of Deficiency Determination (NODD) issued by the Income Tax Audit Division (ITA) for the Idaho State Tax Commission (Commission) dated July 29, 2010. The NODD asserted additional Idaho income tax, penalty, and interest in the amount of \$913 for taxable year 2006 and \$806 for taxable year 2007 for a total amount due of \$1,719.

The following is a brief summary of the facts leading up to this decision. During taxable years 2006 and 2007, Petitioner, a non-resident of Idaho, received income from her partnership interest in [Redacted] is a partnership with reported Idaho apportionment of 100 percent. Under Idaho Code § 63-3030(a)(1), “Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of two thousand five hundred dollars (\$2,500)” is required to file a tax return in Idaho.

Because Petitioner had over \$2,500 of Idaho income, the ITA contacted Petitioner and requested she file Idaho returns for taxable years 2006 and 2007. On March 13, 2010, Petitioner submitted a return for taxable year 2007 only. This return was rejected by the Commission because Petitioner did not include a copy of her [Redacted] return and she did not include capital gain in the amount of \$34,832 that was reported on her Schedule K-1 from [Redacted]. The ITA again contacted Petitioner requesting she correct her 2007 return and also submit a return for taxable year 2006.

On June 22, 2010, Petitioner sent in copies of her [Redacted] and state returns for taxable years 2006 and 2007, but she failed to include any capital gain income reported from her Schedule K-1 for taxable years 2006 and 2007. Again, the returns were rejected, and the Commission issued an NODD on July 29, 2010, to assess taxes, penalties, and interest for taxable years 2006 and 2007.

Petitioner has not provided any further information or explanation of why she has not included capital gains on her taxable year 2006 return. For taxable year 2007, Petitioner has submitted another return including the capital gain but has an unsubstantiated loss used to offset the capital gain. It is well settled in Idaho that an NODD issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Id. Since the Petitioner has failed to meet this burden, the Commission finds that the amount shown due on the NODD is true and correct.

THEREFORE, the Notice of Deficiency Determination dated July 29, 2010, and directed to [Redacted], is hereby AFFIRMED.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following tax, penalty, and interest (computed to October 14, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$626	\$157	\$157	\$ 940
2007	581	145	105	<u>831</u>
			TOTAL DUE	<u>\$1,771</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 _____ 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.