

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23490
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

On August 11, 2010, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing additional income tax and interest for taxable year 2006 in the total amount of \$2,345. The petitioner filed a timely protest and petition for redetermination. The petitioner was informed of her appeal rights. The petitioner has not responded to the Commission’s appeal rights notification or provided additional information. The Commission, having reviewed the file, hereby issues its decision.

In 2006, the petitioner received \$1,124,060 of proceeds relating to an installment sale that occurred in 2004. The petitioner reported, as part of her federal taxable income for taxable year 2006, long-term capital gain of \$420,587 from the 2004 installment sale. In addition to the capital gain, the petitioner claimed a deduction in arriving at Idaho taxable income in the amount of \$24,835. According to petitioner’s representative in an email dated August 26, 2010:

In years prior to 2006, the taxpayer sold her stock in an S corporation, collecting the proceeds from that sale in the year of sale and in years following the year of sale. She elected to apply the installment method to such sale. The final sales proceeds were collected in 2006. The adjusted tax basis of her S corporation stock for Idaho tax purposes was higher than the adjusted tax basis of her stock for federal tax purposes. Such difference arose because the federal tax laws allowed for more accelerated deductions (e.g. depreciation) than did the Idaho tax laws during the period that the taxpayer held the S corporation stock. The 2006 Idaho subtraction is the excess Idaho tax basis over the federal tax basis of the S corporation stock (e.g., that portion of the total excess whose recover had been deferred under the installment method to 2006).

In looking at taxable year 2004, the year of the installment sale, the petitioner filed Idaho Form 43 as a part-year resident and reported 100 percent of the income generated by an S corporation that she owned an interest in. More specifically, the petitioner reported the following activity relating to the S corporation, including her sale of the corporate stock, as being subject to Idaho tax:

Amounts passed through from the S corporation to the petitioner:	
Ordinary income	\$1,543,308
Interest income	311
Net capital gain	2,258,727
Federal Form 4797 long-term capital gain	<u>2,099,374</u>
Subtotal	5,901,720
Federal Form 6252 Installment Sale Income from sale of S corporation's stock	<u>1,694,604</u>
Total	<u><u>\$7,596,324</u></u>

The petitioner's sale of the S corporation's stock was reported on the installment method as follows:

	Taxable Years		
	2004	2005	2006
Sales price (and contract price)	\$8,020,860		
Petitioner's federal adjusted basis	<u>-6,121,587</u>		
Gross profit	<u><u>\$1,899,273</u></u>		
Gross profit percentage (sales price divided by gross profit)	23.679169%	24.137799%	37.416775%
Payments received during taxable year	<u>7,156,520</u>	54,778	1,124,060
Capital gain portion of the payments	<u><u>\$1,694,604</u></u>	<u>\$13,222</u>	<u>\$420,587</u>

It is the petitioner's representative's position the federal basis of the S corporation stock amounting to \$6,121,587 should be adjusted to reflect the fact that Idaho did not allow bonus depreciation on certain assets; therefore, the petitioner's basis for Idaho is different than her basis for federal purposes.

Given that the petitioner's first year that she filed in Idaho was 2004, the year of the installment sale, and that the S corporation did not transact business within Idaho, it is unclear why the petitioner's representative believed Idaho's law somehow created a difference between the petitioner's basis in her S corporation stock. Unfortunately, the Commission's attempt to contact the representative was unsuccessful, since it would appear that the representative is no longer at the CPA firm shown on the Idaho power of attorney form. Nonetheless, Idaho Code section 63-3022O, as it read in 2006, governs the treatment of Idaho's departure from certain federal depreciation provisions. It read, in pertinent part, as follows:

63-3022O. Adjustment—Property acquired after September 10, 2001 -- . . .

For taxable years commencing on and after January 1, 2001, in computing Idaho taxable income:

(1) The adjusted basis of depreciable property, depreciation and capital gains and losses shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code; . . .

Idaho Income Tax and Administrative Rule 120.06 (2007 edition), states in pertinent part:

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance.

...

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. . . .

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction.

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. . . .

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. . . .

The petitioner has not provided any Idaho authority for her position that the auditor's application of Idaho Code section 63-3022O or Idaho Income Tax Administrative Rule 120.06 allows the petitioner to claim a basis upon the disposition of her S corporation stock different than that calculated under the Internal Revenue Code in effect for taxable year 2006. It is the petitioner's burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioner has not met this burden of proof showing that the NODD prepared by the ITA for taxable year 2007 is incorrect, the Commission upholds the ITA's determination.

THEREFORE, the Notice of Deficiency Determination dated August 11, 2010, and directed to the petitioner is hereby AFFIRMED by this decision.

IT IS ORDERED that the petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$1,939	494	\$2,433

Interest is calculated through November 15, 2011, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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 with this decision.

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.
