

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23529
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On September 17, 2010, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax and interest in the total amount of \$32.95 for taxable year 2009. The taxpayers filed a timely protest and petition for redetermination.

The taxpayers did not request an informal hearing, nor did they provide the Commission with any additional information for consideration. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On April 12, 2010, the taxpayers submitted their 2009 nonresident Idaho individual income tax return to the Commission for processing. The return reported the taxpayer's share of partnership income from [Redacted], included Form ID K-1, and showed \$270 in withholding. The Revenue Operations Division reviewed the return and determined the \$270 was the amount of tax paid by the partnership on the taxpayers' behalf, not individual withholding. The Revenue Operations Division adjusted the taxpayers' return and sent them a tax computation letter that showed the effect of removing the credit for withholding.

The taxpayer objected, a Notice of Deficiency Determination was issued, and the taxpayers' file was transferred to the Legal/Tax Policy Division for review.

The taxpayers are partners in [Redacted], who transacts business in Idaho and is therefore required to file an Idaho partnership return. In taxable year 2009, [Redacted] reported a distributable income of \$18,939 and a tax due of \$1,080, which it paid on behalf of its partners.

The taxpayers' portion of the income was \$3,551, and their portion of the tax paid by [Redacted] was \$270. The taxpayers received Idaho source gross income in excess of \$2,500, met the Idaho filing requirements for that year, and filed an Idaho individual income tax return, even though [Redacted] had paid the tax on their share of the partnership income.

Idaho Code section 63-3022L states in part:

Individuals who are officers, directors or owners of an interest in a pass-through entity or beneficiaries of a trust or estate. (1) Individuals who are officers, directors or owners of an interest in a pass-through entity, as defined in section 63-3006C, Idaho Code, transacting business in Idaho or who are beneficiaries of a trust or estate with income taxable in Idaho may elect to have Idaho tax relating to income described in subsection (2) of this section reported and paid by the pass-through entity. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. The election in this section is not available to an individual who is an Idaho resident.

(2) The election in subsection (1) of this section applies to:

- (a) Wages, salary and other compensation paid by the pass-through entity to such officers, directors, owners of an interest in a pass-through entity or beneficiaries to the extent the compensation is Idaho taxable income of the individual to whom it is paid; and
- (b) The share of any income, loss, deduction or credit of a pass-through entity required to be included on such individual's Idaho return.

The tax paid by [Redacted] is only required if the election under Idaho Code section 63-3022L is made by a partner or the partner fails to file an Idaho individual income tax return when one is so required or fails to pay the tax due on such return. The tax paid by [Redacted] for taxable year 2009 is considered to be the tax paid by the partnership for its partner, but is not considered to be withholding under Idaho Code section 63-3022L and cannot be allowed as such on the taxpayers' individual income tax return. [Redacted] would be entitled to a refund of tax that has subsequently been reported and paid by a previously electing partner, but only if the

partnership files a timely amended partnership return requesting such refund. The refund of taxes paid by the partnership cannot be accomplished on the partner's return.

Wherefore, the Notice of Deficiency Determination dated, September 17, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The Notice of Deficiency Determination has been paid in full, therefore no DEMAND for payment is made or necessary.

An explanation of the taxpayers' 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.