

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23726
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On November 9, 2010, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable years 2002, 2004, and 2005 in the total amount of \$12,739.

The taxpayer filed a timely protest. He did not submit additional information or request an informal conference. The Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

When the Bureau could not find any record of the taxpayer's 2002, 2004, and 2005 Idaho individual income tax returns, the taxpayer was sent a letter advising him of the missing returns and asking him for an explanation. The taxpayer did not respond.

The Bureau requested and received income information from the Internal Revenue Service (IRS) in accordance with Internal Revenue Code § 6103(d) and Idaho Code § 63-3077. Those records indicated that the taxpayer's income for the taxable years 2002, 2004, and 2005 exceeded the filing requirements of Idaho Code § 63-3030.

Idaho Code § 63-3045(1)(a) states:

63-3045. Notice of redetermination or deficiency -- Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall

be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

Because the taxpayer did not file his state income tax returns, the Bureau prepared provisional returns and issued an NODD. The NODD was based on information obtained from [Redacted] and records retained by the Commission. On January 11, 2011, the taxpayer submitted a timely protest stating that he believed “there may be an error in the figures for my tax years 2002, 2004 and 2005. I have a CPA working on those records and hope to have final paperwork on them soon.” The Bureau sent the taxpayer a letter acknowledging his protest and granting him additional time to gather the necessary information. However, when the returns did not arrive as promised, his file was transferred to the Legal/Tax Policy Division of the Commission for administrative review.

The taxpayer did not respond to a letter advising him of his appeal rights. To date, the Commission has not received the taxpayer's 2002, 2004, or 2005 Idaho individual income tax returns or any additional information. The Commission, believing the taxpayer has had more than an adequate amount of time to prepare and submit his income tax returns, decided this matter based on the information available.

The Idaho resident individual income tax returns the Bureau prepared on behalf of the taxpayer were based on income information gleaned from the taxpayer's [Redacted] records and the records retained by the Commission. The filing status of single was used to determine the taxpayer's Idaho income tax responsibility.

For taxable year 2002, the NODD was based on wages earned by the taxpayer and reported on form W-2. The Bureau researched but could not locate any Idaho withholding to

offset the amount of tax due. In 2004, the taxpayer became a 50 percent partner in [Redacted]. Based on the income information for the partnership for taxable year 2004, the Bureau was able to determine the taxpayer's share of ordinary income. This amount was then used to determine the taxpayer's Idaho income tax liability.

For taxable year 2005, the partnership did not show a profit, but the taxpayer did receive a guaranteed payment for that year. Partnerships are flow-through entities (Internal Revenue Code [IRC] section 701). In general, each partner accounts for his distributive share of the partnership's gains and losses, charitable contributions, taxes, and income or loss. (IRC section 702) In determining the income or loss of a partnership, guaranteed payments are treated as made to a person who is not a partner. However, for other tax purposes, guaranteed payments are treated as a partner's distributive share of ordinary income. (Treasury Regulation section 1.707-1(c)) Since guaranteed payments are a distributive share of ordinary income, the Bureau used the amount of the guaranteed payment received by the taxpayer, minus the ordinary income loss and one-half of self-employment taxes, to determine the taxpayer's Idaho adjusted gross income and subsequent income tax liability for taxable year 2005.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Since the taxpayer failed to meet his burden, the Commission finds the adjusted gross income amount for taxable years 2002, 2004, and 2005 calculated by the Bureau is a reasonable representation of the taxpayer's Idaho adjusted gross income based upon the information available.

The interest and penalty added by the Bureau pursuant to Idaho Code §§ 63-3045 and 63-3046 was reviewed and found to be proper.

THEREFORE, the Notice of Deficiency Determination dated November 9, 2010, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following amount of tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$ 126	\$ 32	\$ 62	\$ 220
2004	1,105	276	415	1,796
2005	7,017	1,754	2,214	<u>10,985</u>
			TOTAL DUE	<u>\$13,001</u>

Interest is calculated through October 28, 2011.

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

An explanation of the taxpayer'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.
