



## FACTS

1. [Redacted] are part of a federal consolidated affiliated group (Consolidated Group) that filed a federal Form 1120 U.S. Corporate Income Tax Return (Form 1120) for taxable years 2004 and 2005. (Per federal information)

2. [Redacted] (Parent) is the common parent corporation of the Consolidated Group that was comprised of approximately 56 corporations including Petitioner I and Petitioner II. Also included within the Consolidated Group in 2004 and 2005 was [Redacted]. (Form 1120, federal Form 851.)

3. In September 2005 and 2006, Petitioner I filed an Idaho corporate income tax return on a non-combined reporting basis for taxable years 2004 and 2005, respectively. The Idaho corporate income tax return was filed under Petitioner I's own name and FEIN. The Idaho Form 41 reflects positive income subject to apportionment for taxable year 2004 and a net loss subject to apportionment for 2005. However, since the Idaho apportionment factor percentage for both 2004 and 2005 was zero, the only payment remitted with the filing of the 2004 and 2005 Idaho corporate income tax returns was the \$20 minimum tax and the \$10 Permanent Building Fund Tax (PBF). (Idaho Form 41 for taxable years 2004 and 2005).

4. In September 2006, Petitioner II filed an Idaho Corporate income tax return on a non-combined reporting basis for taxable year 2005. The Idaho corporate income tax return was filed under Petitioner II's own name and FEIN. The Idaho Form 41 reflects positive income subject to apportionment. However, since the Idaho apportionment factor percentage was zero, the only payment remitted with the 2005 Idaho corporate income tax return was the \$20 minimum tax and the \$10 PBF. (Idaho Form 41 for taxable year 2005.)

5. In September 2005 and 2006, [Redacted] filed an Idaho corporate income tax return on a non-combined reporting basis for taxable year 2004 and June 2005, respectively. The Idaho

corporate income tax return was filed under the [Redacted] own name and FEIN. The Idaho Form 41 reflects positive income subject to apportionment for both years with an Idaho apportionment factor percentage of 12.2447 percent and 13.5445 percent for taxable year 2004 and June 2005, respectively. [Redacted] paid corporate income tax plus the PBF in the amount of \$31,646 for taxable year 2004 and \$12,873 for taxable year June 2005. (Idaho Form 41 and the Commission's computerized records).

6. [Redacted] was sold sometime in June 2005 (apparently on June 19, 2005) and was no longer part of the Consolidated Group after its sale in June 2005.

7. On September 15, 2008, an amended Idaho corporate income tax "group return" for taxable year 2004 was filed under the Parent's FEIN and the Consolidated Group's name. A statement was attached to the amended Idaho Form 41 informing the Commission that the separate filing methods for Petitioner I and [Redacted] had been changed from a separate filing method to a combined/unitary method. The amended Idaho Form 41 reflects a request for a refund of tax in the amount of \$48,320. (Amended Idaho Form 41 for taxable year 2004.)

8. On November 10, 2008, an amended Idaho corporate income tax "group return" for taxable year 2005 was filed under the Parent's FEIN and the Consolidated Group's name. A statement was attached to the amended Idaho Form 41 informing the Commission that the separate filing methods for Petitioner I, Petitioner II, and [Redacted] had been changed from a separate filing method to a combined/unitary method. The amended Idaho Form 41 reflects a request for a refund of tax in the amount of \$12,886. (Amended Idaho Form 41 for taxable year 2005.)

9. On October 26, 2008, the Petitioners filed a second Idaho amended corporate income tax "group return" for taxable year 2004 under the Parent's FEIN and the Consolidated Group's

name. The purpose of the second amended return was to correct the amount of refund requested from \$48,320 to \$36,320. (Amended Idaho Form 41 for taxable year 2004.)

10. [Redacted]

11. On February 16, 2011, the Petitioners filed the Petition.

12. On April 1, 2011, the Petitioners filed another amended Idaho corporate income tax return as a “group return” for taxable year 2004 under the Parent’s EIN and the Consolidated Group’s name. This third amended return for taxable year 2004 was filed to report [Redacted] audit changes as a result of an [Redacted] examination. Once again, the amended return reflects a request for a refund of tax in the amount of \$48,320.

#### **ITA’S NODD POSITION**

In the NODD, the ITA denied the refund request because “the requested refunds relate to [[Redacted]] 2004 and 2005 Idaho tax liability. In June of 2005, [the Parent] sold its ownership in [[Redacted]]. As a result, [the Parent] is not entitled to a refund of any tax and interest that may be due to [[Redacted]].” The ITA cites Section 63-3027(t)(1), Idaho Code, and Idaho Income Tax Administrative Rule 365 as its authority to deny the refund request.

#### **PETITIONERS’ POSITION**

In the Petitioners’ Protest, the Petitioners’ provided the following arguments:

We are not in agreement with [ITA’s] determination for the following reasons: 1) [the Parent] has complied with Idaho Code and has properly computed income and tax for each of the separate companies in the combined group appropriately; 2) The audit team's denial of refund is not supported by statute; and 3) All tax payments were made by [the Parent], not by [[Redacted]] and are therefore refundable to [the Parent].

#### **Compliance with Idaho Code:**

[The Parent] determined it had incorrectly filed Idaho returns on a separate entity basis and filed amended returns to properly reflect the activity of the entities in the unitary group.

The . . . combined return properly computed income as required under 63-3027 (t), Idaho Code, for each member of the unitary group. The total combined tax was properly computed for each separate entity in the combined group resulting in \$20 tax each for [Petitioner I] and [[Redacted]] in year ending 12/31/04 and \$30 each for these same two entities and for a third entity, [Petitioner II], for year ending 12/31/05.

The total tax determined by the . . . combined report and for which the entities are responsible is \$40 for year ending 12/31/04 and \$90 for year ending 12/31/05 resulting in overpayments of \$36,320 and \$12,886 for years ending 12/31/04 and 12/31/05, respectively.

**Denial of Refund not supported by Statute:**

The audit team's denial of the refunds is without merit. The audit team has denied the refunds not based on the factual merits or calculation of the refunds themselves, but rather by misconstruing the statute to say something that it does not. The decision to deny the requested refunds is purportedly based on reliance of Idaho Income Tax Administrative Rules 365.01 and .02 wherein the use of a combined report does not disregard the separate corporate identities of the members of the unitary group and that each included corporation shall be responsible for computing and paying its tax including any minimum tax due pursuant to Sections 63-6025 and 63-6025A, Idaho Code, as determined by the combined report.

The audit team's conclusion that the statute supports the denial of refunds properly calculated and reflected on a combined return based on the status of the entities 5 years after the reporting year makes no sense. Nothing in the statute indicates that an otherwise legitimate refund be denied based on a change of members in subsequent years. Nothing in the statute states that the filing entity for the group cannot collect an otherwise legitimate refund on behalf of the entire group.

The statute states that each corporation shall be responsible for computing and paying its tax. [The Parent] has complied with the statute and has properly calculated income and tax for each separate entity within the group. [The Parent] has complied with the filing requirements for combined groups and is entitled to collect the refunds on such returns on behalf of all members. There are no statutes, administrative codes or other official materials stating that legitimate tax overpayments on a combined return cannot be sent to the filing entity and that all such refunds must be sent to each separate corporation within the combined group. The reason a single combined return is allowed is to relieve Idaho and unitary taxpayers from the administrative burden of processing multiple returns, payments and refunds. The audit team's position does not make sense and cannot possibly be consistent with administrative practices of the Commission with respect to combined returns.

**[The Parent] made all tax payments for unitary group:**

[The Parent] is seeking refunds for payments it actually made. All tax payments for the unitary group were in fact paid from its own funds. . . .

In the event the Commission determines that refunds may only be paid back to the entity which actually made the original payment, [the Parent] requests that all payments made by [the Parent] be transferred back to [the Parent's] account . . . under the authority of Idaho Code §63-4007 wherein a revenue officer may not apply such payment to any obligation which is disputed by the taxpayer and, where applicable, shall apply such payment in accordance with the taxpayer's direction. [The Parent] disputes the application of any payments to the separate company liability of any other separate company and directs that all payments be credited to [the Parent] and be refunded.

Although the appeals team has not disputed the total tax liability reflected on the combined returns, should the appeals team later determine that separate tax liabilities exist, it may seek payment for any unpaid taxes from the separate companies responsible for such payments under the statute. [The Parent] will be happy to honor such requests for payment for any separate company currently remaining in the unitary group.

**Conclusion:**

The current position of the audit team lacks sense, is not supported by statute and is not based on a finding that the calculations are incorrect or that a unitary group does not exist. All of the payments were actually made by [the Parent], not by [[Redacted]] therefore, denial of refunds because they are owing to [[Redacted]] who is no longer a member of the unitary group is not valid because [[Redacted]] did not actually make any payments.

Clearly, the most practical solution is to process the refunds as requested on properly prepared combined reports and to remit the refunds to the entity responsible for filing the return on behalf of the entire unitary group. This is consistent with the administrative intent of the statutes allowing combined reports. Alternatively, the payments made by [the Parent] should be transferred from the accounts to which the payments were applied to [the Parent's] account and refunded based on its separate company tax liability for all years in question of \$0.

We respectfully request you let common sense guide you in this decision . . .

**ITA'S POST PETITION RESPONSE**

In ITA's Protest Summary document (a document prepared by the ITA in response to the Petitioners' Petition), the ITA noted that because Petitioners I and II had no Idaho apportionment factor for taxable years 2004 and 2005, the Idaho tax liability in taxable years 2004 and 2005 for these entities did not change as a result of converting from a separate filer to a combined reporting filer. The ITA then reaffirmed its position that the Parent was not entitled to a refund of the corporate income taxes paid [Redacted] since three years prior to the filing of the amended return refund requests, the Parent had sold its interest in [Redacted]. With respect to the Petitioners' Section 63-4007, Idaho Code, argument, ITA responds as follows:

The audit staff does not believe that Idaho Code section 63-4007 applies in this situation. This code section only applies when a taxpayer owes multiple tax obligations and makes a single payment to a revenue officer with respect to those obligations. At that time, the taxpayer may direct how the payment will apply to those multiple obligations. The code is also clear that it does not apply to payments remitted with a tax return, which is exactly the situation in this case. We also believe the statute does not intend that this direction allowed to a taxpayer should occur years after the fact.

### **LAW AND ANALYSIS**

Every corporation which is transacting business in this state, authorized to transact business in this state, or having income attributable to this state, unless exempt from the tax imposed in this chapter, must file an Idaho corporate income tax return.<sup>1</sup> In the present docket, those corporations filing as part of the Consolidated Group that had an Idaho corporate income tax filing requirement were Petitioner I (2004 and 2005), Petitioner II (2004), and [Redacted] (2004 and 2005). As such, Petitioner I, Petitioner II, and **[Redacted]** fall within Idaho's definition of taxpayer.<sup>2</sup>

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<sup>1</sup> Section 63-3030(a)(3), Idaho Code.

<sup>2</sup> The term "taxpayer" means any person subject to a tax imposed by this act or required by the provisions of this act to file an income tax return, report income or pay a tax. Section 63-3009, Idaho Code.

Petitioner I and [Redacted] timely filed Idaho corporate income tax returns for taxable years 2004 and 2005. Petitioner II timely filed an Idaho corporate income tax return for taxable year 2005. These Idaho corporate income tax returns filed by Petitioner I, Petitioner II, and [Redacted] were not filed based upon combined reporting but instead based upon each corporation's own activity. No evidence has been presented to indicate that any of the other affiliated members of the consolidated group, including the Parent, had an Idaho filing requirement for taxable years 2004 or 2005.

In 2008, several years after [Redacted] had been sold and was no longer part of the Parent's consolidated affiliated group, the Parent determined that, in 2004 and 2005, the Parent and its affiliates, including Petitioner I, Petitioner II, and [Redacted] were part of the same unitary combined group. As such, the Parent filed under its EIN a "group return." The filing of a "group return" is described in Idaho Income Tax Administrative Rule 365.06<sup>3</sup> as follows:

Each included corporation [of a combined group] may file a separate return reporting its share of the combined net income or loss of the unitary group. In the alternative, the unitary group may elect to file a group return for all the included corporations. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements in this rule.

According to Idaho Income Tax Administrative Rule 325.08, "[a] unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. . . . Use of the **group return** precludes the need for each corporation to file its own Idaho corporate income tax return."<sup>4</sup> Emphasis added.

Typically, a corporation that had originally filed on a separate company basis would simply amend its own return to convert from a separate company basis to a combined basis. That did not happen in this docket. Instead, as previously mentioned, the Parent under its FEIN

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<sup>3</sup> IDAPA 35.01.01.365.06 (2011).

<sup>4</sup> IDAPA 35.01.01.325.08 (2011).

filed an amended Idaho Form 41 as a “group return” to report the conversion from a separate company filing to a combined reporting filing. The amended “group return” is attempting to amend the original returns filed by Petitioner I, Petitioner II, and [Redacted] from a separate filing basis to a combined reporting basis. At the time the “group returns” were filed by the Petitioners, [Redacted] had been sold and was no longer part of the Parent’s Consolidated Group or combined group.

Under Idaho’s combined reporting statute, each corporation in a combined group transacting business in Idaho is a separate taxpayer with its own separate tax liability. Its tax liability is computed by allocating and apportioning to each corporation its share of the income of the entire unitary group. Section 63-3027(t)(1), Idaho Code, provides:

The Idaho taxable income of any corporation subject to taxation in this state shall be determined by use of a combined report which includes the income, determined under subparagraph (2) of this subsection, of all corporations which are members of a unitary business, allocated and apportioned using apportionment factors for all corporations included in the combined report and methods set out in this section. The use of a combined report does not disregard the separate corporate identities of the members of the unitary group. Each corporation which is transacting business in this state is responsible for its apportioned share of the combined business income plus its nonbusiness income or loss allocated to Idaho, minus its net operating loss carryover or carryback.

Emphasis added. That means that each member of the group return filing as part of a combined report is responsible for its own Idaho corporate income tax liability, a debt that is owed by that Idaho taxpayer to the state of Idaho. Members of the unitary group that, as discrete corporations, have no nexus with Idaho or are otherwise exempt from Idaho income taxation have no Idaho tax liability. In situations where a subsidiary having Idaho nexus is sold but continues its own existence either separately or as a member of another federal affiliated group, it is the subsidiary, not the other members of the former combined group, that is liable for any unpaid Idaho

corporate income tax, or in the event of an overpayment of Idaho corporate income tax, is entitled to the refund.

In the docket before the Commission, it is Petitioner I, Petitioner II, and [Redacted] that must determine its own Idaho income tax liability or overpayment of Idaho income tax even when included within an Idaho group return. Because Petitioner I and Petitioner II had no Idaho apportionment factor for taxable years 2004 and 2005, a change from a separate company basis to a combined reporting basis had no impact on the tax liability of Petitioner I and Petitioner II for taxable year 2004 or 2005. Similarly, the amended group return filed to report the federal audit adjustments had no impact on the tax liability of Petitioner I or Petitioner II. However, the change from a separate filing basis to a combined reporting basis would have an impact on the tax liability of [Redacted]. It is unclear if the federal audit adjustments would or would not have an impact on [Redacted] Idaho income tax liability.

Neither the Parent, Petitioner I, nor Petitioner II have provided the Commission with any documentation from [Redacted] that authorized the Parent, Petitioner I, or Petitioner II to file an amended Idaho corporate income tax return on behalf of [Redacted] and to receive an overpayment of the Idaho income tax belonging to [Redacted]. Without such authorization or an Idaho law that would authorize the Commission to do so, the ITA was correct in declining to issue a refund belonging to **[Redacted]** to the Parent, Petitioner I, or Petitioner II.

The Parent further argues that since the actual payment for the Idaho corporate income tax was paid out of the Parent's account, the Parent should be entitled to the refund as it has the right to direct how the payments are to be applied in accordance with Section 63-4007, Idaho Code. As such, the Parent requested, in its letter dated February 10, 2011, that said payments be transferred back to the Parent under its EIN.

Section 63-4007, Idaho Code, provides:

If any taxpayer owes multiple tax obligations and makes any single payment to any revenue officer with respect to such obligations, such revenue officer may not apply such payment to any obligation which is disputed by the taxpayer and, where applicable, shall apply such payment in accordance with the taxpayer's directions. Payments remitted together with a tax return shall be applied to the tax obligation on that return.

When the Petitioner I, Petitioner II, and [Redacted] timely filed their Idaho corporate income tax returns for taxable years 2004 and 2005, each of the corporations self-assessed the amount of Idaho corporate income tax it owed. Accompanying each of those returns was a separate payment to be applied against the self-assessment. At the time the payment was applied to each of the returns, the payment was not in dispute and the payment was applied in accordance with the directions given at the time the returns were filed. Furthermore, as previously identified by the ITA, the facts in this docket do not support a conclusion that Petitioner I, Petitioner II, or [Redacted] made a "single payment" to be applied against multiple tax obligations. As such, the Commission finds that Section 63-4007, Idaho Code, does not support the Parent's attempt to have the prior payments transferred back to the Parent.

### **CONCLUSION**

The Commission has not received a timely filed amended return filed by [Redacted] requesting a refund of overpayment of its Idaho corporate income taxes for taxable years 2004 and 2005. Nor has the Parent, Petitioner I, or Petitioner II provided any documentation from [Redacted] authorizing any overpayment of Idaho corporate income taxes to be paid to the Parent, Petitioner I, or Petitioner II.

THEREFORE, the NODD dated December 9, 2010, and directed to the Petitioners denying the Petitioners' refund claim, is hereby AFFIRMED.

An explanation of the Petitioners' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.

Copy mailed to:

[Redacted]

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