

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 23935
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated February 28, 2011. The Notice of Deficiency Determination (NODD) asserted additional liabilities for Idaho income tax and interest in the total amount of \$1,533 for 2007.

During 2007, the petitioner was a nonresident of Idaho. She owned an interest in [Redacted] which transacted business in Idaho and reported an Idaho apportionment factor of 100 percent. During 2007, the LLC reported (among other items of income and deduction) short term capital gains in the amount of \$22,848. On her 2007 Idaho nonresident income tax return, the petitioner failed to report the amount of the short term capital gains from the LLC.

The auditor added the amount of the short term capital gains to the income reported by the petitioner and sent the NODD to above. She cited Idaho Code § 63-3026A and Administrative Rule 263 as authority for her position. Idaho Code § 63-3026A stated, in pertinent part:

Computing Idaho taxable income of part-year or nonresident individuals, trusts and estates. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

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- (3) For the purposes of subsections (1) and (2) of this section:
- (a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:
    - (i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

Administrative Rule 263 stated, in pertinent part:

**DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME.**

Section 63-3026A(3), Idaho Code.

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules.

A protest was filed on behalf of the petitioner indicating that an amended return had been filed on behalf of the petitioner and that the income in question had been reported. However, upon reviewing the amended return in question, it appears that the income was not reported as Idaho source income. No further explanation or argument has been offered on behalf of the petitioner.

After reviewing the computations made by the auditor, it appears to the Commission that the auditor has properly included the income in the computation of Idaho taxable income. Accordingly, the Commission must affirm the NODD.

THEREFORE, the NODD dated February 28, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest (computed to April 30, 2012):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,317	\$265	\$1,582

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

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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.

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