

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24509
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On May 4, 2011, the Idaho State Tax Commission received a partnership income tax return from [Redacted] (Petitioner) for taxable year 2007. Petitioner’s self-assessed income tax liability for the year was \$5,858. The Tax Commission added penalty and interest in the amounts of \$1,464.50 and \$997.30, respectively, and sent a Notice of Deficiency Determination to Petitioner. Petitioner protested and asked that the Tax Commission reconsider the addition of penalty and interest because it was unaware an income tax return was required and it was not intentional that a return was not filed.

The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner failed to respond to the hearing rights letter as well as to the follow-up letter sent by the Tax Commission. Therefore, the Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner has a long collection history with the Tax Commission on its permit based taxes. During the collection activity, Petitioner was notified that the Tax Commission had no Idaho income tax returns from Petitioner for any of the years Petitioner transacted business in Idaho. Petitioner subsequently filed income tax returns for taxable years 2004 through 2009, all received on May 4, 2011. Penalty and interest were added to the tax Petitioner owed, and Notices of Deficiency Determination were sent to Petitioner.

Petitioner protested the addition of penalty and interest for taxable year 2007 and asked that the Tax Commission waive the additions. Petitioner stated it was unaware that LLCs were required to file income tax returns with Idaho. Petitioner stated it assumed that since no LLC returns were required [Redacted], an LLC return was not required for Idaho. Petitioner stated it was not intentional that it did not file Idaho income tax returns.

LAW AND ANALYSIS

Idaho Code section 63-3045(6)(a) states:

Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.

Idaho Code section 63-3046(c)(1) states:

In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such returns for each month elapsing after the due date (including extensions) of such returns until the return is filed.

Rule 430.03.d. further clarifies the application of the delinquency penalty.

If the return is filed after the extended due date and the tax is paid after the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the due date of the return to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. (3-15-02)

Petitioner began transacting business in Idaho as early as 2001, and as early as 2001, Petitioner had collection issues with its Idaho permit based taxes. Petitioner stated it was unaware of its requirement to file Idaho income tax returns. The Tax Commission sees this as a little odd since Petitioner had regular dealings with Tax Commission staff and applied for and received its permit based tax numbers. It seems only logical that an entity coming into Idaho to transact

business, that applies for sales tax and travel and convention tax permits, would not inquire about its requirement to report any other taxes imposed by the state. Nevertheless, Petitioner asks that the Tax Commission consider its lack of knowledge about Idaho's filing requirements and the fact that its failure to file Idaho income tax returns was unintentional.

Petitioner's argument for its failure to timely file its Idaho income tax returns is not very compelling. The Idaho Supreme Court in Powers v. Canyon County, 108 Idaho 967, 703 P.2d 1342 stated:

We are not persuaded, however, that procedural due process places a general duty on government to attempt to educate or inform the public of potential penalties or benefits resulting from duly enacted statutes and ordinances properly codified and made available to those seeking actual knowledge of the law. Our entire legal system is based upon the principle that persons are charged with constructive knowledge of the statutes and laws. E.g., Cooper v. Arizona Western College Dist. Governing Bd., 125 Ariz. 463, 610 P.2d 465 (App.1980); Smith v. Mahoney, 590 P.2d 323 (Utah 1979). Property owners are bound and often deprived of property by encumbrances shown in the real estate records. Criminals are bound and often deprived of their liberty by violations of the criminal statutes of which they had no personal knowledge. Tortfeasors are bound and often deprived of property by violations of both statutes of which they had no knowledge, and the common law which may not have been "discovered" by the courts until that case, and then perhaps on appeal. In none of these cases does procedural due process allow a defense or complaint based upon ignorance of the law or upon the government's failure to take reasonable steps to inform the public of the substance of the statutes. (Underlining added.)

Petitioner's arguments are not persuasive. Therefore, the Tax Commission's decision is that the delinquency penalty and interest are appropriate.

THEREFORE, the Notice of Deficiency Determination dated August 1, 2011, [Redacted] is AFFIRMED.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$5,858	\$1,464.50	\$1,279	\$8,601.50

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 _____ 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.
