

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24636
)
)
Petitioners.) DECISION
)
_____)

The petitioners protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated September 29, 2011. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax and interest in the total amount of \$27,060 for 2007.

The petitioners were, at all times relevant to this matter, residents of Idaho. The petitioners were issued the NODD as a result of an adjustment to the return of [Redacted], a limited liability company which was wholly-owned by the petitioners. [Redacted] filed their income tax returns as a partnership. A decision for [Redacted] is being rendered concurrently with this decision.

The nature of the adjustment to the return of [Redacted] was to disallow a claimed charitable contribution deduction in the amount of \$400,000. The deduction was claimed on the return of [Redacted] as a cash contribution. The purported charitable contribution was not a cash contribution, but instead a bargain sale of real property to a charitable organization.

The adjustment made by the auditor to the return of [Redacted] is being affirmed by the Commission. Accordingly, the adjustment to the tax asserted in the NODD issued to the petitioners is also being affirmed in this decision.

A negligence penalty in the amount of \$1,093 was also asserted by the auditor. Idaho Code § 63-3046(a) which stated:

If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

The petitioners claimed the deduction in question as a cash contribution while knowing this was not the case. The petitioners signed the closing agreement conveying the property to the charitable organization and were, therefore, fully aware of the nature of the transaction. Yet, they misrepresented the transaction on their tax return. Had the property been sold in a cash sale along with a cash contribution to the charitable organization, they would have reported the sales price of the property as \$1,000,000 and computed the gain accordingly. This was not done.

If they had correctly reported a charitable deduction through a bargain sale (which they now contend), they would have been required to divide the basis in the property between that portion which was sold and that portion which was donated. Treasury Regulation 1-1011-2(b) stated:

Apportionment of adjusted basis. For purposes of determining gain on a sale or exchange to which this paragraph applies, the adjusted basis of the property which is sold or exchanged shall be that portion of the adjusted basis of the entire property which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the entire property. The amount of such gain which shall be treated as ordinary income (or long-term capital gain) shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of the sale or exchange as the amount realized on the sale or exchange bears to the fair market value of the entire property at such time. The terms "ordinary income" and "long-term capital gain", as used in this section, have the same meaning as they have in paragraph (a) of §1.170A-4. For determining the portion of the adjusted basis, ordinary income, and long-term capital gain allocated to the contributed portion of the property for purposes of applying section 170(e) (1) and paragraph (a) of §1.170A-4 to the contributed portion of the property, and for determining the donee's basis in such contributed portion, see paragraph (c) (2) and (4) of §1.170A-4. For determining

the holding period of such contributed portion, see section 1223 (2) and the regulations thereunder.

This division was also not made as the entire basis was deducted in determining the reported gain.

The approach taken by the petitioners did not follow the right reporting procedures for either a cash contribution or for a bargain sale to the charitable organization. While the negligence penalty might not be applied to the partner for actions taking place at the partnership level, which he had no reason to understand, in this particular case, the partners (or members) were fully cognizant of the nature of the transactions. Accordingly, the Commission finds that the negligence penalty is appropriate.

THEREFORE, the Notice of Deficiency Determination dated September 29, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to November 15, 2012):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$21,864	\$1,093	\$4,917	\$27,874

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

An explanation of the petitioners' 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.
