

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 24670  
Petitioner. )  
DECISION  
\_\_\_\_\_ )

[Redacted] (Petitioner) protested the Notice of Deficiency Determination (NODD) dated November 14, 2011, asserting income tax, and interest in the total amount of \$3,375 for taxable years 2008, 2009, and 2010. The Petitioner owned and rented two properties; one in [Redacted] and one in Idaho. The Petitioner had two shareholders, each 50 percent owners. One of the Petitioner’s shareholders was an individual who was a resident of [Redacted].

**BACKGROUND**

The Income Tax Audit Bureau (Bureau) reviewed the 2008, 2009, and 2010. The Bureau researched the Tax Commission’s records and found that one of the two shareholders had not filed an Idaho income tax return since 1996, although the Petitioner’s returns show net income greater than the \$2,500 filing requirement. The Petitioner protested the Bureau’s determination. The Bureau requested additional information from the Petitioner but did not receive a response. Therefore, the Bureau referred the matter for administrative review.

**LAW AND ANALYSIS**

Idaho Code section 63-3022L provided, for taxable years before January 1, 2011, that when a nonresident member of an LLC fails to file an Idaho income tax return reporting his share of the LLC’s Idaho taxable income, the LLC can be held liable for the tax, at the corporate rate, on the unreported income. Since the Petitioner’s shareholder was a nonresident and did not file an Idaho income tax return, the Bureau asserted the tax upon the Petitioner. After the NODD

was issued, the non-filing shareholder filed his 2008, 2009, and 2010 individual Idaho income tax returns.

**CONCLUSION**

Since the non-filing shareholder filed the missing returns, the Tax Commission finds the application of Idaho Code section 63-3022L(3) is moot and hereby overturns the imputation of the tax on the Petitioner.

THEREFORE, the Notice of Deficiency Determination dated November 14, 2011, and directed to [Redacted] is CANCELLED according to the provisions of 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.  
  
\_\_\_\_\_