

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 24998
[Redacted])
)
Petitioner.) DECISION
_____)

BACKGROUND

On April 4, 2012, the Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Petitioner) proposing income tax, penalty, and interest for taxable year ended November 30, 2006, in the total amount of \$20,988. On June 1, 2012, the taxpayer filed a timely protest and provided some additional information. The file was transferred to Legal/Tax Policy Division on July 23, 2012, for resolution.

ISSUE

1. Whether Audit erred when calculating the gain on the sale of some Idaho real estate.

DISCUSSION

This is a non-filer case. The Petitioner did not submit Idaho Corporation Income Tax returns for taxable year ended November 30, 2006. Audit received a 1099-S reporting that the Petitioner had sold real estate in Idaho during 2006 and had received total gross receipts of \$180,000.

Idaho Code § 63-3030 says in part:

“Persons required to make returns of income.

(a) Returns with respect to taxes measured by income in this chapter shall be made by the following:

...
...

(3) 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;

Idaho Income Tax Administrative Rule 201.01. In General.

a. A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. Required records must be made available on request by the Tax Commission or its authorized representatives.

The NODD was prepared as though the Petitioner was an S-Corporation. As part of their protest the Petitioner provided select pages from a Federal Form 1120, indicating that they are in fact a C-Corporation. That does not affect the amount of tax due. The pages that the Petitioner provided show that there was a tax deferred exchange under Internal Revenue Code § 1031. The “property” listed as having been given up was two LLC interests. According to IRC § 1031, an interest in an LLC, stock in a company is not “like kind” property, therefore not qualified for tax deferred treatment.

CONCLUSION

A NODD issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com’n, 110 Idaho 572 (Ct. App. 1986). The burden is on the taxpayer to show the deficiency is erroneous. Albertson’s, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Petitioner failed to file its Idaho Corporation income tax return for the taxable year ended November 30, 2006. Having presented no information in support of its position, the Petitioner has failed to meet its burden of proving error on the part of the deficiency determination. Absent verifiable information to the contrary, the Commission accepts Audit’s calculation of Idaho income tax, penalty, and interest for those years.

THEREFORE, the Notice of Deficiency Determination dated March 20, 2012, and modified on July 16, 2012, and directed to the Petitioner is hereby AFFIRMED by this decision.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
11/30/06	\$ 13,680	\$ 3,420	\$ 4,200	<u>\$ 21,300</u>

Interest is calculated through December 31, 2012, and will continue to accrue at the rate set forth in Idaho Code § 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given. As set forth in the enclosed explanation, you must deposit with the Commission 20 percent of the total amount due in order to appeal this decision.

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.
