

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 22010
[Redacted],)
)
Petitioner.) DECISION
)
_____)

BACKGROUND

The Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted], (Petitioner) a Subchapter S. Corporation¹ (S-Corp) on April 15, 2009 for the taxable years 2005 through 2007. There is no tax owed at the corporate level, the consequence of this NODD is that income and expense adjustments are passed through to the shareholder. The Petitioner filed a timely request for redetermination on June 16, 2009. Audit also issued a NODD to the shareholder that received pass-through income and expense adjustments as a result of the corporation audit. An informal hearing was held at the Boise office of the Commission on May 8, 2012. The Petitioner requested more time to submit documents to support their position. A Modified NODD was issued on September 11, 2012, based on the additional documents provided.

ISSUES

1. The amount of gain on the sale of assets. The petitioner disputes the zero basis used in the calculation of the gain.
2. Whether the NODD erred by including recapture of the assets expensed under Internal Revenue Code Section 179, while including them at one hundred percent (100%) in the gain calculation.

¹ A corporation that has elected to be treated as a pass-through entity as defined in Internal Revenue Code section 1361(1).

3. Specific business expenses that were disallowed.

DISCUSSION

The Petitioner sold their business as an asset sale to [Redacted], [Redacted] on November 30, 2005. Included in the sale of the Petitioner was a non-compete clause for the owner. The owner and sole shareholder went to work for [Redacted] as an employee under a contract from December 1, 2005, through October 12, 2007.

The Petitioner supplied Audit with a copy of the “asset sale” agreement. This includes the customer lists, goodwill, and company files.

GAIN ON SALE

The gross receipts received for the assets, was determined to be one hundred percent (100%) gain. All the equipment, furniture and fixtures purchased in 2002 and after were expensed under Internal Revenue Code section 179 resulting in a zero adjusted basis.

RECAPTURE

IRC section 179 allows the expensing of assets in the year purchased, up to a limit set by law. The Petitioner typically took full advantage of this law. If the assets are sold or otherwise taken out-of-service before the assets would have been fully depreciated using the straight line method the difference is recaptured. The Petitioner disputed the amount of recapture, because some of these assets were included in the overall gain calculation. The specific assets have been identified and Audit has accepted the changes. The Modified NODD reflects these changes.

DISALLOWANCE OF CERTAIN EXPENSES

The Petitioner's 2006 Idaho Corporation Income Tax Return included \$34,540 in business expenses claimed, creating, or adding to the loss that flowed through to the shareholder's individual return. The Petitioner's protest claimed that the business purpose is that those are expenses incurred in winding down the business and therefore deductible. Audit points to the "non-compete" portion of the sales contract and questioned the ongoing rate of expense while not engaging in new business activities. The auditor requested and received the receipts and records of the company for the years in question. The majority of the expenses were found to be personal in nature, having nothing to do with the company or business activities. After selling the company and starting to work as an employee, expenses incurred for insurance sales can only be reimbursed by the new employer or claimed as unreimbursed employee expenses. They would not be qualified business expenses for the Petitioner. None of the information provided supported the business purpose of "winding up" the S-Corporation's business.

Audit reviewed the additional documentation provided after the hearing. The Modified NODD reflects those changes.

CONCLUSION

Having reviewed the NODD and the subsequent information provided by the Petitioner, the Commission makes this decision. The Petitioner failed to substantiate several items on the original Idaho Corporation Income Tax Return.

THEREFORE, the Notice of Deficiency Determination dated April 15, 2009, and Modified on September 11, 2012, directed to the Petitioners is hereby AFFIRMED by this decision.

An explanation of the Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
