

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23556
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated September 8, 2010. The Notice of Deficiency Determination (NODD) denied a requested refund in the amount of \$7,246 plus applicable interest for 2006.

The petitioner was a member of an LLC (taxed as a partnership) which owned a parcel of real estate. Mr. [Redacted] had a 25 percent interest in the LLC. During 2006, the other member of the LLC purportedly sold the building without either the knowledge or consent of Mr. [Redacted]. The LLC reported the gain from the disposition of the property. The petitioner initially filed his 2006 Idaho income tax return in January 2010 reflecting the gain from the LLC. In July 2010, the petitioner filed an amended 2006 Idaho income tax return deleting the income from the LLC. This amended return is the sole matter to be dealt with in this docket. The auditor denied the adjustments made in the amended return, contending that the income was reportable by the petitioner even though he had not received his portion of the proceeds from that sale. Civil litigation between the members of the LLC followed, with a portion of the proceeds of the sale of the building being held subject to the control of the court.

The petitioner contends that he did not have “constructive receipt” of the funds from the sale of the property. Accordingly, he contends that he is not required to reflect the income from

the sale of the property on his 2006 Idaho income tax return. He cited no authority to support this position.

The auditor denied the adjustments made in the amended return stating that since the gain from the sale of the property was income to the partnership in 2006 that the partners were required to report the income on their individual income tax returns regardless of whether or not the funds were distributed to the partners. Among other authority, the auditor cited the Tax Court's decision in Stonehill v. Commissioner, T.C. Memo 1987-405 as authority for her position. The issue in the Stonehill case also revolved around the receipt or constructive receipt of income from a partnership. That decision stated, in part:

Section 706(a) requires that a partner's distributive share of the income, gain, loss, deduction, or credit of the partnership be included in his taxable income for the taxable year of the partnership ending within or with the partner's taxable year. Section 1.702-1(a), Income Tax Regs., requires the partner to 'take into account separately in his return his distributive share, WHETHER OR NOT DISTRIBUTED, \* \* \*.' (Emphasis supplied).

Respondent's contention is that petitioner's receipt of his distributive share of the partnership income is irrelevant for tax purposes. We agree with respondent.

\* \* \*

Few principles of partnership taxation are more firmly established than that no matter the reason for nondistribution each partner must pay taxes on his distributive share. Treas. Reg. sec. 1.702-1 \* \* \*. United States v. Basye, 410 U.S. 441, 453 (1973).

Accordingly, the Commission finds that actual distribution of the proceeds of the sale by the LLC is not relevant to the determination of whether the petitioner is taxable on his portion of the income of the LLC. Accordingly, the amended return was properly denied by the auditor.

THEREFORE, the Notice of Deficiency Determination dated September 8, 2010, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

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.  
  
\_\_\_\_\_