

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24682
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

The Idaho State Tax Commission’s (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioners) proposing additional income tax, penalty, and interest for taxable year 2009, in the total amount of \$38,695, and another Notice of Deficiency Determination (NODD-S) to [Redacted] (an S corporation that is 100 percent owned by [Redacted]) proposing additional tax, penalty, and interest for taxable year 2009, in the total amount of \$32. The petitioners filed a timely petition for redetermination (Petition). No petition for redetermination was filed on behalf of [Redacted] (S Corp); however, the adjustments to S-Corp have an impact on the resolution of the petitioners petition as discussed below. The petitioners did not request a section 63-3045(2), Idaho Code, hearing. The Commission, having reviewed the file, hereby issues its decision.

S-Corp.

S-Corp is a corporation that elected to be taxed as an S corporation. The Commission’s records reflect that S-Corp had filed a Form 41 Idaho S Corporation Income Tax Return for several taxable years prior to taxable year 2009. On those returns, the business of the S-Corp is identified as a [Redacted]. On April 25, 2011, the TDB contacted S-Corp and requested that S-Corp file an Idaho Form 41 for taxable year 2009. Since S-Corp did not respond with the filing of Idaho Form 41, the TDB on May 10, 2011, sent to S-Corp a Proposed Income Tax Schedule, which TDB referred to as a preliminary return based upon the best information

available to the TDB at that time. On October 11, 2011, the TDB followed up its preliminary return with the issuance of NODD-S seeking tax, penalty, and interest totaling \$32. In October 2011, the S-Corp remitted a payment of \$32, but did not file a petition for redetermination. Rather than file an Idaho income tax return in March of 2012, the S-Corp sent the Commission a copy of its [Redacted] U.S. Income Tax Return for an S Corporation for taxable year 2009.

The difference between the amounts reported in the TDB’s preliminary return, TDB’s NODD-S, and the amount reported on the Federal Form 1120S are as follows:

Description	TDB Preliminary Report	TDB NODD-S	S-Corp Federal 1120S
Gross receipts or sales	\$260,805	\$251,073	\$249,511
Compensation of officers	(48,000)	(48,000)	(48,000)
Salaries and wages	(23,438)	(23,438)	(23,438)
Rents			(6,338)
Taxes and licenses			(866)
Advertising			(3,100)
Other deductions			(42,953)
Footing error			(121)
Net income to be reported by shareholder	\$189,367	\$179,635	\$124,695

In both the preliminary return and the NODD-S, the TDB used an average approach to try to calculate the amount of receipts generated by the S-Corp in 2009. The amount of compensation, as well as salaries and wages, was information available to the TDB. Since the S-Corp had not filed an Idaho income tax return for 2009, the TDB did not allow any additional expenses that the TDB could not directly verify. As it turns out, it does appear that the S-Corp attempted to file an Idaho Form 41 for taxable year 2009; unfortunately, the S-Corp reported its 2009 activity on an Idaho Form 41 for taxable year 2010. S-Corp had previously filed its Idaho Form 41 for taxable year 2010 back in March of 2011.

When reviewing the prior couple years return, the S-Corp only filed the first two pages of an Idaho Form 41S, and did not include a copy of his federal income tax return as required under Idaho Income Tax Administrative Rule 800, which states:

“...a taxpayer shall include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments.”

Since the husband is the sole owner, and as an officer of S-Corp, the Commission would encourage the husband to comply with Idaho law and start attaching a complete copy of S-Corp’s [Redacted] income tax return to S-Corp’s Idaho income tax return when filing the S-Corp’s Idaho Form 41S.

The TDB used the \$179,635 amount as the amount that the petitioners were required to report on the petitioners’ Idaho individual income tax return.

The Petitioners

On March 28, 2011, the TDB sent a letter to the petitioners requesting that the petitioners file their Idaho resident individual income tax return for taxable year 2009. The Commission’s records reflect that the petitioners had filed Idaho resident income tax returns for the previous years, but not for 2010.

On May 10, 2011, since the petitioners did not file their 2009 return, the TDB sent the petitioners a preliminary return that the TDB had prepared based upon information available to the TDB. The preliminary return was followed up by the issuance of the NODD on October 11, 2011. In response to the NODD, the petitioners filed their petition.

In the petition dated December 12, 2011, the petitioners did not dispute that they had an Idaho filing requirement and instead stated:

“I am currently preparing the Tax return requesting and will file it immediately upon completion.”

In a subsequent letter dated January 6, 2012, the petitioners stated:

“I just wanted to let you know that I am still working on my returns. The burned out, former tax attorney who helps me with my returns had been doing a District Court Brief and not working on the returns. I think we are close to completion. I just wanted you to know I was not ignoring you and still working on them.”

On January 9, 2012, the TDB sent the petitioners a letter granting the petitioners additional time with a deadline date of February 9, 2012, to provide the TDB with the requested Idaho income tax return. The petitioners did not meet the deadline set forth for the filing of their Idaho income tax return; however, sometime prior to May 2012, the Commission did receive a copy of the petitioners’ [Redacted]. Individual Income Tax Return for taxable year 2009.

Since the petitioners did not provide the TDB with their Idaho income tax return for taxable year 2009, the file was forwarded into the Commission’s informal appeals process and the petitioners were informed of their appeals right.

The difference between the amounts reported in the TDB’s preliminary return, the TDB’s NODD, and the amount reported on the petitioners’ Federal Form 1040 are as follows:

TABLE 2		Preliminary	TDB	Federal
Description	Type	TDB Report	NODD	1040
[Redacted]	W-2	\$48,000	\$48,000	\$48,000
[Redacted]	W-2	204	204	
Social Security Administration	1099-MISC	230,081		
[Redacted]	K-1	3,181	3,818	
[Redacted]	K-1	189,367	179,635	124,695
Personal exemptions		(10,950)	(10,950)	(10,950)
Standard deduction		(11,400)	(11,400)	
Itemized deductions:				
State income taxes	Fed. Sch. A			(2,976)
Personal property taxes	Fed. Sch. A			(1,549)
Home mortgage interest	Fed. Sch. A			(25,778)
Charitable contributions	Fed. Sch. A			(14,012)
Total		\$448,483	\$209,307	\$117,430

The \$209,307 figure represents what the TDB believes to be the petitioners' Idaho taxable income. The \$117,430 represents what the petitioners believe to be their [Redacted] taxable income. Simply put, the TDB and the petitioners primarily differ as to the income and expense items that should be used to determine the petitioners' Idaho taxable income.

In reviewing the petitioners' prior two years return information, the petitioners did report W-2 income from the [Redacted] as well as income from an investment in [Redacted]. The TDB was able to confirm through access to [Redacted] information, that a W-2 was issued to the petitioners for the \$204 amount. Thus, the omission of this income in the [Redacted] return, provided to the Commission for taxable year 2009, raises concern as to the correctness of the petitioners' calculation of its [Redacted] taxable income. As for the income from the investment in [Redacted], the petitioners have provided no explanation to the Commission to refute the amount used by the TDB in the NODD.

For the last couple of years prior to 2009, the petitioners' salary from S-Corp was the same \$48,000 amount, with Idaho state income taxes withheld of \$4,800. For taxable year 2009, the W-2 information from [Redacted] reflects that the state income taxes paid were \$4,800 not \$2,976. The \$2,976 represents the amount of social security tax withheld, not the amount of state income taxes, and should not have been taken as a deduction on the petitioners' [Redacted] Schedule A; however, this item has no impact on the petitioners' Idaho taxable income.

A review of the petitioners' prior two years tax returns shows that the petitioners had mortgage interest and charitable contributions roughly equal to what was reported on [Redacted] Schedule A for taxable year 2009. As for the amount of interest expense for taxable year 2009,

[Redacted] information obtained by the TDB shows that the petitioners did pay mortgage interest of \$24,886 for taxable year 2009 as follows:

Description	Form Type	Mortgage Interest
[Redacted]	1098	\$1,619
[Redacted]	1098	23,267
Total		<u>\$24,886</u>

As for the other major difference relating to the amount of income and expenses flowing through to the petitioners' [Redacted] individual income return, due to the 100 percent ownership of S-Corp, it does appear that the S-Corp had reported having rent expense and other deductions in prior years similar to what was reported on the [Redacted] income tax return provided to the Commission for taxable year 2009.

FINDING

Because the petitioners have not filed an Idaho income tax return for taxable year 2009, section 63-3068(o), Idaho code, states:

(o) For the purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

Accordingly, the NODD issued by the TDB, as modified by this decision, becomes the petitioners Idaho individual income tax return upon when such taxes as specified in the decision are assessed.

Neither party disputes that the petitioners were required to report the \$48,000 of wages in taxable year 2009. TDB has confirmed that the petitioners did receive a W-2 in the amount of \$204 for taxable year 2009. The petitioners have not provided any explanation to dispute the \$3,818 amount asserted in the NODD as not being valid. The S-Corp for taxable year 2009

reported rent expense, taxes, and other deductions. Similar deductions were claimed in prior taxable years. As such, for now the Commission will treat those amounts as the best information available.

As previously mentioned, although the petitioners incorrectly deducted the \$2,976 of social security taxes instead of the \$4,800 of state income taxes, it does not matter in this situation, because the state income taxes would be required to be added back as an Idaho adjustment in arriving at Idaho taxable income. As for the other itemized deductions, the Commission will include the personal property taxes and charitable contributions as shown on the [Redacted] 1040 provided to the Commission for taxable year 2009; however, the Commission will limit the mortgage interest to the amount confirmed against [Redacted] information as shown above in Table 3.

In reviewing the information provided by both parties to this dispute, the Commission modifies the amounts as shown in the NODD in arriving at the petitioners Idaho taxable income for 2009 as follows:

TABLE 4

Description	TDB NODD	Adjustment	Total
[Redacted]	\$48,000		\$48,000
[Redacted]	204		204
[Redacted]	3,818		3,818
[Redacted]	179,635	(54,940)	124,695
Personal exemptions	(10,950)		(10,950)
Standard deduction	(11,400)	11,400	0
Itemized deductions:			
State income taxes			0
Personal property taxes		(1,549)	(1,549)
Home mortgage interest		(24,886)	(24,886)
Charitable contributions		(14,012)	(14,012)
Idaho Taxable Income	\$209,307	(\$83,987)	\$125,320

The Idaho income tax for taxable year 2009, on a taxable income amount of \$125,320, is \$9,108. After the inclusion of a \$10 permanent building fund tax and a credit for \$4,800 of withholding, and a grocery credit of \$120, the net tax due for taxable year 2009 is \$4,198. Interest is assessed on that amount in accordance with section 63-3045(6)(c), Idaho Code. Additionally, the Commission upholds the TDB's proposed assessment of the section 63-3046(c), Idaho Code, failure to file a return penalty. Finally, the language contained within this decision shall not be construed as placing any limitation on the Commission's authority to conduct an audit of the amounts used herein to compute the petitioners' Idaho taxable income and Idaho income tax for taxable year 2009, or assess any additional amount of income tax due except as set forth in section 63-3068, Idaho Code, period of limitations for issuing a notice of deficiency and collection of tax.

THEREFORE, the Notice of Deficiency Determination dated October 11, 2011, and directed to the petitioners is hereby AFFIRMED AS MODIFIED by this decision.

IT IS ORDERED that the petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$4,198	\$1,050	\$559	\$5,807

Interest is calculated through July 31, 2013, and will continue to accrue at the rate set forth in section 63-3045, Idaho Code.

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 _____ 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.
