

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24913
[Redacted],)	
)	
Petitioners.)	DECISION
)	
_____)	

BACKGROUND

The Income Tax Audit Bureau (Audit) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted], dated March 8, 2012, asserting income tax, penalty, and interest in the total amount of \$2,024 for taxable year 2008. The Petitioners, timely protested the NODD on April 18, 2012.

ISSUES

1. Whether the Tax Commission has the authority to make an adjustment to a tax return that was filed three years ago.
2. Whether the tax laws were changed after the Petitioners filed their returns causing the returns to be incorrect.
3. Whether the [Redacted] were used in a “revenue producing enterprise” as defined by the legislature, under Idaho Code section 63-3022H.
4. Whether imposing a tax on the gain from selling business assets after the Petitioners paid sales tax when purchasing the business assets, is double taxation.
5. Whether Audit was correct in imposing a negligence penalty in addition to the tax liability of the Petitioner.
6. Whether interest on the tax liability continues to accrue until paid.

DISCUSSION

The Petitioners sold two [Redacted] in 2008 claiming the Idaho Capital Gain deduction for the gain on the sales. The Petitioners' 2008 Idaho income tax return was filed almost a year late. Audit disallowed the deduction based on the narrow definition of a revenue producing enterprise that the legislature included in the statute.

LAW AND ANALYSIS

First we look at whether the Tax Commission has the authority to make an adjustment of a tax return filed approximately two years earlier.

63-3068. Period of limitations for issuing a notice of deficiency and collection of tax. (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.

In fulfilling its charge and duties (Idaho Code section 63-105), the Tax Commission makes every effort to review and analyze all the information it receives in a timely manner. Ideally, the Tax Commission would like to notify taxpayers of any tax deficiencies shortly after the end of the filing season. However, because of the time necessary to match up the volumes of information available and the limitations of our staff size, it sometimes takes longer than we would like. Regardless, the statute of limitations in this case had not expired because the statute does not start until a return is file. (Idaho Code section 63-3068.) The Petitioners filed their 2008 Idaho Income Tax Return on January 8, 2010. The NODD in this case was sent on March 8, 2012, the time to make an adjustment to the tax liability would end on January 8, 2013. Therefore, the Tax Commission was well within the time limit for sending a NODD.

Second, whether law changes caused the adjustments to the Petitioners return. All of the statutes quoted in this NODD and in this decision were in effect during taxable year 2008.

Third, whether [Redacted] were used in a “revenue producing enterprise” as defined in Idaho Code section 63-3022H. A [Redacted] operation does not fit within the 63-3022H definition of a revenue producing enterprise.

63-3022H. Deduction of capital gains. (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) Property held by an estate, trust, S corporation, partnership, limited liability company or an individual is “qualified property” under this section if the property had an Idaho situs at the time of sale and is:

(a) Real property held at least twelve (12) months;

(b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;

(c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;

(d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;

(e) Timber grown in Idaho and held at least twenty-four (24) months;

(f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the Internal Revenue Code shall apply, except that the holding period shall not include the holding period of property given up in an exchange, when such property would not have constituted qualified property under this section without regard to meeting the holding period nor shall the holding period include any time period in which the property subject to this section was held by a corporation other than an S corporation.

(4) As used in this section “revenue-producing enterprise” means:

(a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;

(b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;

(c) The feeding of livestock at a feedlot;

(d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

Fourth, whether the income tax on the gain from selling business assets is double taxation. The Idaho sales tax laws are found at sections 63-3601 through 63-3641 of the Idaho Code. Sales taxes are an excise tax based on the purchase price of most tangible personal property. Sales taxes are due whenever the final user of a product makes the purchase, without regard to the amount of income a taxpayer earns.

The Idaho Income tax laws are found at sections 63-3001 through 63-3087. Income taxes are based on the amount of Idaho Taxable Income that Idaho residents and businesses earn. These are separate laws and applied in separate situations. The NODD did not include any sales taxes again on the sale of the property. There was no double taxation.

Fifth, whether the imposition of a negligence penalty on the underpayment of tax was correct. Idaho Code section 63-3045(a) says in relevant part:

“...The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer’s right to appeal...”

The NODD sent to the Petitioners did not include an explanation of the five percent penalty that was imposed.

The Commission waives the penalty because of the lack of an explanation.

The last item is the interest on the tax due. Interest on an outstanding tax liability is required by statute. See Idaho Code section 63-3045.6.

CONCLUSION

Having reviewed the information available and the relevant laws, the Commission makes this decision. The NODD dated March 8, 2012, and directed to [Redacted] and [Redacted] with the exception of the negligence penalty, is AFFIRMED by this decision.

IT IS ORDERED that the Petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/2008	\$1,698	0	\$301	<u>\$1,999</u>

The Commission updated the interest through April 30, 2013, on the Petitioners' tax liability.

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.
