

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25104
)
)
Petitioner.) DECISION
)
_____)

BACKGROUND

On May 3, 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 years 2005 through 2008, in the total amount of \$14,679. On June 29, 2012, the taxpayer filed a timely protest. The file was transferred to the Tax Policy Division on February 26, 2013, for resolution. The Petitioner was sent letters on May 18, 2011, June 22, 2011, July 5, 2011, and December 14, 2011, requesting information and warning of a deficiency assessment. No returns were filed and no information was provided.

On March 19, 2013, the Commission sent the Petitioner and his accountant under a limited power of attorney (POA), a letter outlining the options for resolving an NODD. The POA called and requested a copy of our statute and asked if we would wait until after April 15, 2013, to allow him to finish tax season. No returns or other information has been received to date.

ISSUES

1. Whether the income from an LLC that the Petitioner owns a portion of, is taxable Idaho source income to a non-resident.

2. Whether the penalties should be imposed in the NODD under Idaho Code section 63-3046 for not filing a tax return.

LAW AND ANALYSIS

63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term “Idaho taxable income” includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

...

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions. Partnership income, including guaranteed payments pursuant to section 707 of the Internal Revenue Code, is sourced to Idaho based upon the Idaho apportionment factor of the partnership; excluding:...

Underline added.

DISCUSSION

This is a non-filer case. The Petitioner did not submit Idaho individual income tax returns for taxable years 2005 through 2008. Audit requested and received a transcript of the Petitioner’s [Redacted] income records from the [Redacted] in accordance with Internal Revenue Code § 6103(d) and Idaho Code § 63-3077, that indicated the Petitioner may have had a requirement to file Idaho individual income tax returns for taxable years 2005 through 2008. Specifically, the Petitioner received Schedules K-1 from a [Redacted], a limited liability company (LLC) doing business in Idaho. The K-1 showed the Petitioner had Idaho source income greater than the \$2,500 amount, requiring he file a return for each of the referenced years except 2005. The 2005 K-1 showed less than \$2,500 gross income from an Idaho source. The

Petitioner also received a W-2 and 1099s from the same Idaho LLC. The original NODD included all the salary and non-employee compensation from the Idaho LLC. The Petitioner is a resident of [Redacted] and there is no indication that the Petitioner ever did any work in Idaho. The wages and non-employee compensation are not taxable to Idaho. However, the K-1 income is from his ownership in an active Idaho business. During the redetermination process, Audit recalculated the NODD removing the 2005 tax year wages and non-employee compensation. The modified workpapers were sent to the POA on August 2, 2013, for comment. No response was received.

CONCLUSION

1. Whether the income from an LLC that the Petitioner owns a portion of, is taxable Idaho source income to a non-resident.

The Petitioner's gross income exceeded the \$2,500 threshold for a non-resident, requiring he file an Idaho income tax return in taxable years 2006 through 2008. The NODD was reviewed and modified to include only the income from his ownership in a business with Idaho source income under Idaho Code § 63-3026A(3)(a)(i).

2. Whether the penalties should be imposed in the NODD under Idaho Code section 63-3046 for not filing a tax return.

The Commission does not wish to pursue the penalties in this case.

A Notice of Deficiency Determination 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 Petitioner to show the deficiency is erroneous. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Petitioner failed to file his 2006 through 2008 Idaho individual income tax returns. Having presented no information in support of his position, the Petitioner failed to meet his burden of proving error on the part of the deficiency determination. Absent information to the contrary, the Commission accepts Audit's calculation of Idaho income tax, and interest for those years.

THEREFORE, the Notice of Deficiency Determination dated May 3, 2012, Modified on August 2, 2013, and directed to [Redacted] is hereby AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/06	\$ 196	\$ 0	\$ 65	\$ 261
12/31/07	383	0	96	479
12/31/08	179	0	33	<u>212</u>
			TOTAL	<u>\$ 952</u>

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

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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.
