BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 24712
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

BACKGROUND

On November 15, 2011, 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 year 2007, in the total amount of $2,210. The Petitioner submitted a Power of Attorney Form (POA) naming [Redacted] as her representative. On January 17, 2012, the POA filed a timely protest. On November 27, 2012, the file was transferred to the Tax Policy Division for resolution. On February 6, 2013, the Commission sent the taxpayer a letter that explained the methods available for redetermining an NODD.

ISSUES

1. Whether the [Redacted] ([Redacted]) was a qualified investment partnership in 2007[1], and therefore, nontaxable income to the nonresident partners.

2. Whether the apportionment percentage reported on the Petitioner's 2007 K-1 from the [Redacted] was incorrect.

3. Whether the income distribution reported on the Petitioner's 2007 K-1 from the ([Redacted]) was incorrect.

[1] Idaho Code §63-3026A(3)(c) and Income Tax Administrative Rule 275.

DISCUSSION

The Petitioner was a resident of [Redacted] during 2007, and did not file an Idaho return. After being contacted by Audit, the Petitioner filed her 2007 individual income tax return on March 26, 2012. Audit sent a letter requesting additional documentation to verify the income reported on Idaho Form 43. The Petitioner then filed an amended return on June 13, 2012. The POA indicated that there was an error in the partnership return, which caused the gain from the sale of some partnership property to be included twice. Also, the original partnership return showed an apportionment percentage of 100 percent, even though some of the property held for investment was not located in Idaho.

LAWS AND ANALYSIS

> Idaho Code § 63-3026A(3)(c):
> "Nonresident individuals shall not be taxable on investment income from a qualified investment partnership. For purposes of this paragraph, a "qualified investment partnership" means a partnership, as defined in section 63-3006B, Idaho Code, that derives at least ninety percent (90%) of its gross income from investments that produce income that would not be taxable to a nonresident individual if the investment were held by that individual." Underline added.

The question of whether a partnership is a "Qualified Investment Partnership" must be answered each year and for each partner. First, this portion of the statute only applies to nonresident taxpayers. The relative size of various types of income can change constantly, therefore the only way to judge whether a particular partnership is qualified is at the end of each year.

Based on the information in the partnership return and additional information provided to Audit, the total gross receipts of the [Redacted] during taxable year 2007, were $2,327,635. Of that amount, $76,290, or approximately 3.2 percent, were connected to Idaho and of the nature that would be taxable in the hands of a nonresident taxpayer. The remaining 96.8 percent of the

gross receipts would not be taxable to a resident of another state if those were received directly by the individual and not passed through a partnership domiciled in Idaho. For factor purposes, the total gross receipts that are sourced to Idaho were $88,765, or approximately 4.2 percent. The difference is the dividends that are from publicly traded stocks, and interest from bonds which are sourced to the domicile of the partnership for apportionment factor purposes, but which would not be taxable to Idaho in the hands of a nonresident.

CONCLUSION

Since the gross receipts of the partnership that would be non-taxable to a nonresident exceeded 90 percent, the [Redacted] qualified as a "Qualified Investment Partnership". The income from the [Redacted] for taxable year 2007, is not taxable to the nonresident partners.

There is no need to consider the other issues at this time.

THEREFORE, the Notice of Deficiency Determination dated November 15, 2011, corrected on September 9, 2013, and directed to [Redacted] is hereby CANCELLED.

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

DATED this _____ day of _____ 2014.

IDAHO STATE TAX COMMISSION

_____

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.

_____