

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 24793  
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 )  
Petitioners. ) DECISION  
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\_\_\_\_\_ )

BACKGROUND

On December 22, 2011, the Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted](Petitioners) proposing income tax, penalty, and interest for taxable years 2007 through 2009, in the total amount of \$12,700. The Petitioners responded, but did not make a valid protest. Audit sent a “28 day letter” outlining the items necessary to make a valid protest and requesting a response within 28 days of that notice. On February 17, 2012, the Petitioners filed a timely, valid protest with some additional information. After reviewing the new information, Audit modified the NODD on January 11, 2013. The remaining balance due of tax, penalty, and interest was \$2,665. The Petitioners agreed to adjustments for their net operating loss carryover and health insurance premium. The remaining issues are whether the 2007 statute of limitations has expired and the deduction of unreimbursed partnership expenses.

The file was transferred to the Legal/Tax Policy Division (Policy) on March 6, 2013, for resolution. The Commission sent letters explaining the redetermination options on March 28, 2013, and September 19, 2013.

## ISSUES

1. Whether the waiver to extend the statute of limitations was limited to the specific items requested in the initial letter sent by the auditor.

2. Whether the unreimbursed partnership expenses claimed by the Petitioners are deductible.

## DISCUSSION

When Audit sent the initial letter on August 22, 2011, the auditor included a waiver for the statute of limitations. The waiver itself was not restricted and extended the statute for taxable year ended December 31, 2007. The initial request letter asked about the Petitioners' health insurance premiums and the self-employed health insurance deduction on their [Redacted] income tax return. The Petitioners argue that this request, mailed with the waiver, limits the waiver to those specific items. The waiver itself made no mention of specific topics. It extends the statute for the entire taxable year 2007.

The Petitioners provided additional information in support of the unreimbursed partnership expenses on May 31, 2012, and more on November 5, 2012. However, the Petitioners suffered a [Redacted] and lost a great deal of their personal records, so they were unable to provide support for some of the expenses.

## LAW AND ANALYSIS

On the first issue, whether the waiver to extend the statute of limitations was limited by the specific items requested in the initial letter sent by the auditor.

The waiver of the statute of limitations signed by the Petitioners contained the following statement:

“The restrictions provided by Section 63-3068(a) and Sections 63-3072(c) and 63-3072(e) of the Idaho Code are hereby waived and are extended through **December 30, 2011**, for the taxable year ended 2007.”

The normal statute of limitations is controlled by:

Idaho Code §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.

Idaho Code § 63-3072 discusses credits and refunds. This waiver extends the 2007 taxable year until December 31, 2011. The NODD was issued before that date. The waiver itself was not restricted in any way, but extended “taxable year” 2007.

The second issue is whether the unreimbursed partnership expenses can be deducted. The purpose of the partnership was to invest in, and operate, a [Redacted]. The nature of the deductions is such that it is difficult to distinguish the personal from the business elements. The specific expenses included interest expense, auto expense, cell phone use, and some travel, meals, and lodging. Interest expense incurred to protect an investment normally would be subject to the 2 percent of Adjusted Gross Income threshold on Schedule A of [Redacted] form 1040, and is limited to the investment income.

The Commission allowed extra time in consideration of the Petitioners unfortunate circumstance of suffering a [Redacted]. However, it is the taxpayers’ responsibility, and the burden rests upon them to disclose their receipts and claim their proper deductions. United States v. Ballard, 535 F.2d 400 (1976). The Commission recognizes that the taxpayers may have had business expenses to offset their income; yet, if the taxpayers are unable to

provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and the taxpayers must bear their misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931). The partnership agreement provided to Audit said that if a partner was not reimbursed by the partnership, they could deduct the expense. There is no evidence that a reimbursement was requested. There is also the question of whether the partnership could have reimbursed the partner for the out-of-pocket expenses. Audit disallowed the deduction of the unreimbursed partnership expenses for both a lack of substantiation and the question of whether these expenses should have been reimbursed by the partnership.

CONCLUSION

On the first issue, the waiver was not restricted; therefore the NODD is valid for the 2007 taxable year through December 31, 2011.

On the second issue, without evidence that the Petitioners attempted to get reimbursed for their costs and failed, there is no way to determine if that right has been exhausted. Also, even having lost all the records for that year, most documents like bank statements, credit card statements, travel, and phone records can be obtained from the various parties. To date, no such evidence has been provided. Therefore the Commission accepts the NODD as modified by Audit.

THEREFORE, the Notice of Deficiency Determination dated August 14, 2012, MODIFIED on January 11, 2013, and directed to [Redacted] is hereby AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/07	\$ 1,757	88	477	\$ 2,322
12/31/08	0	0	0	0
12/31/09	345	17	54	416
				<u>\$ 2,708</u>

Interest is calculated through April 15, 2014, 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 Petitioners' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

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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.