

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24983
Petitioner.)
DECISION
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated April 2, 2012, issued by the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission asserting Petitioner failed to report all its gross income for the fiscal years ending 10/31/08, 10/31/09, and 10/31/10. Since Petitioner is a flow-through entity, the additional income and resulting tax, penalty, and interest was added to Petitioner’s shareholders.

BACKGROUND

Petitioner’s corporate income tax returns were referred to the Income Tax Audit Bureau (Bureau) when it was discovered Petitioner’s sales/use tax returns reported significantly more sales than what Petitioner reported on its corporate income tax returns. The Bureau reviewed Petitioner’s corporate income tax filings and found Petitioner did not file a fiscal year 10/31/08 return and that Petitioner’s sales/use tax returns did not agree with the amount of gross receipts reported on Petitioner’s fiscal year 10/31/09 and 10/31/10 corporate income tax returns.

The Bureau sent Petitioner a letter asking about the discrepancies and Petitioner’s requirement to file a fiscal year 10/31/08 corporate income tax return. Petitioner did not respond. The Bureau sent a follow-up letter to Petitioner, but still received no response. Therefore, the Bureau reviewed the information available and determined Petitioner was required to file a fiscal year 10/31/08 corporate return and that Petitioner did not report all its gross income for fiscal years 10/31/09 and 10/31/10. The Bureau prepared a corporate income tax

return for Petitioner for fiscal year 10/31/08, corrected Petitioner's 10/31/09 and 10/31/10 corporate income tax returns, and sent Petitioner a Notice of Deficiency Determination.

Petitioner protested the Bureau's determination, stating that its corporate tax returns were correct. Petitioner stated the Bureau's assumption regarding its sales/use tax returns needed to be reviewed and evaluated to determine why the two returns are substantially different. Petitioner also stated that it filed a fiscal year 10/31/08 return and sent in a copy of that return.

The Bureau reviewed the information provided and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond, so the Tax Commission sent a follow-up letter to Petitioner. Petitioner replied providing additional information and requesting a hearing. Petitioner stated that the issue in question was a sales tax issue rather than an income tax issue. Petitioner stated it believed its income tax returns reported the correct amount of income; it was the sales tax returns that were incorrect. Petitioner stated that when its primary bookkeeper had health issues, the individuals filling in recorded and reported duplicate sales. The duplicate sales were caught at year end by Petitioner's accountant for income tax purposes, but they were not caught when Petitioner filed its monthly sales tax returns. Petitioner's letter stated documents substantiating the duplicate sales were included, but no such documentation was received.

Since the documentation could resolve the matter, the Tax Commission contacted Petitioner and asked for the documentation prior to scheduling a hearing. Petitioner said it would send the documents, but nothing was ever received. The Tax Commission sent Petitioner a letter with copies of the sales tax return information Petitioner filed during the periods and asked that Petitioner send its documentation of the duplicate sales. Petitioner still failed to provide the

requested documentation. The Tax Commission contacted Petitioner leaving a message that the documentation needed to be provided, but again Petitioner failed to respond. The Tax Commission, believing Petitioner had more than ample time to submit its documentation, hereby issues its decision based upon the information available.

LAW AND ANALYSIS

Petitioner filed sales/use tax returns for all the required periods in fiscal years 10/31/08, 10/31/09, and 10/31/10. Petitioner's sales/use tax returns reported taxable sales on which Petitioner collected and remitted sales tax to the Tax Commission. Gross income includes gross income derived from business. (Internal Revenue Code (IRC) section 61.) Gross receipts (sales) are part of gross income derived from business. Generally, the gross receipts reported on a corporate income tax return will equal or exceed the amount of taxable sales reported on an entity's sales tax returns. In this case, Petitioner's sales tax returns reported taxable sales well in excess of its gross receipts reported on its corporate income tax returns. In addition, the Tax Commission did not receive a corporate return from Petitioner for fiscal year 10/31/08.

In the imposition of a tax, the general rule is that there is a strict presumption against the taxing authority. *See Tandy Leather Company v. United States*, 347 F.2d 693 (5th Cir. 1965) (that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid.) In this case, Petitioner filed, of its own accord, sales tax returns reporting taxable sales of a certain amount. The Tax Commission upon receipt of Petitioner's sales tax returns assumed, by the signature of an authorized representative of Petitioner, that the sales tax returns were correct. Upon reviewing Petitioner's corporate income tax returns with its sales tax returns, the Tax Commission found

discrepancies. When questioned, Petitioner stated there were duplicate sales reported on its sales tax returns. Petitioner was asked to substantiate the duplicate sales. Petitioner failed to do so. It is well established that the failure of a party to introduce evidence within his possession and which, if true, would be favorable to him, gives rise to the presumption that if produced it would be unfavorable. Wichita Terminal Elevator Co. v. C.I.R., 6 T.C. 1158 citing Walz v. Fidelity-Phoenix Fire Ins. Co. of New York, 10 Fed.(2d) 22; certiorari denied, 271 U.S. 665; Equipment Acceptance Corporation v. Arwood Can Mfg. Co., 117 Fed. (2d) 442; Hann v. Venetian Blind Corporation, 111 Fed.(2d) 455; Bomeisler v. Jacobson & Sons Trust, 118 Fed.(2d) 261; and Sears, Roebuck & Co. v. Peterson, 76 Fed.(2d) 243.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The Tax Commission had reason to believe Petitioner understated its gross receipts on its corporate income tax returns. Petitioner provided nothing to show its gross income was not understated. Petitioner did not prove its case.

Nevertheless, Petitioner did provide a copy of its fiscal year 10/31/08 corporate income tax return. Upon review and comparison with Petitioner's sales tax returns for that period, the Tax Commission found Petitioner's gross receipts reported on that corporate income tax return exceeded the taxable sales Petitioner reported on its sales tax returns. This being the case, the Notice of Deficiency Determination for fiscal year 10/31/08 is unfounded.

CONCLUSION

Petitioner filed corporate income tax returns and sales tax returns for fiscal years 10/31/08 through 10/31/10. Petitioner argued its corporate income tax returns were correct, and

it was its sales tax returns that were overstated because some of its sales were duplicated. However, Petitioner provided no evidence to support those duplications. Without evidence to support the duplications, the Tax Commission is reluctant to accept Petitioner's statements that any duplications exist. Therefore, the Tax Commission upholds the audit determination where the sales reported on Petitioner's sales tax returns exceeded the gross receipts reported on Petitioner's corporate income tax returns. The Tax Commission also accepts Petitioner's fiscal year 10/31/08 corporate income tax return in lieu of the return the Bureau prepared.

THEREFORE, the Notice of Deficiency Determination dated April 2, 2012, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
10/31/2008	\$20	\$10	\$5	\$35
10/31/2009	0	0	0	0
10/31/2012	0	0	0	<u>0</u>
			TOTAL DUE	<u>\$35</u>

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 _____ 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.
