

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25366
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated September 24, 2012, asserting additional income tax, penalty, and interest totaling \$909,535 for taxable year 2007.

The petitioner and his wife are apparently [Redacted] residents. The husband owns an interest in, and is the managing member of, [Redacted]. According to information available to the Commission, [Redacted] sold real property located in Idaho in taxable year 2007.

The Commission's Income Tax Audit Bureau (Bureau) requested information from the petitioner regarding the sale of Idaho real property and the requirement of [Redacted] to submit an Idaho income tax return. The petitioner did not respond. A follow-up request also went unanswered. Therefore, the Bureau issued an NODD to [Redacted] based on the limited information available.

A protest was filed by the petitioner indicating that additional documentation would be submitted. A significant amount of time has passed and no further documentation has been received. Therefore, the Commission now renders its determination based upon the information in the file.

Idaho Code section 63-3030, states in part, that returns with respect to taxes measured by income shall be made by every corporation that is transacting business in this state, authorized to transact business in this state, or having income attributable to this state, unless exempt from the tax

imposed in this chapter. Transacting business is defined in Idaho Code section 63-3023, which states, “‘transacting business’ shall include owning or leasing, whether as lessor or lessee, of any property, including real and personal property, located in this state, or engaging in or the transaction of any activity in this state, for the purposes of or resulting in economic or pecuniary gain or profit.”

Idaho Code section 63-3022L(3) stated that if no election is made and an officer, director, shareholder, partner, member of beneficiary of a corporation, partnership, trust, or estate transacting business in Idaho fails to file an Idaho income tax return reporting all or any part of the items described in subsection (2) of this section or fails to pay any tax due thereon, such corporation, partnership, trust or estate shall be liable for tax on such items at the rate applicable to corporations.

Idaho Code section 63-3027 requires taxpayers having income from business activity, both within and without Idaho, to allocate and apportion such net income as provided in this section. Since the net apportionable income, in this case, is from the sale of Idaho property, an Idaho apportionment of 100 percent has been used to calculate the Idaho income tax due.

In the present case, the petitioner does not deny [Redacted] sold real property located in Idaho in taxable year 2007 for \$8,100,000, as evidenced by a form 1099S. However, the petitioner believes the determination that [Redacted] is required to file an income tax return is incorrect, and the amount shown as Idaho taxable income is inaccurate.

However, based on the Idaho Code sections referenced above, income from the sale of Idaho real property is Idaho taxable income and a return reporting this income is required. As for the amount of taxable income shown on the NODD, the sales price, the petitioner was given ample opportunity and has furnished nothing to suggest the sales price was not entirely Idaho taxable income. Therefore, the Commission is left with little choice in determining the petitioner’s Idaho income for taxable year 2007.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the petitioner 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). Petitioner did not meet his burden.

THEREFORE, the Notice of Deficiency Determination dated September 2, 2012, and directed to [Redacted], is hereby APPROVED and MADE FINAL.

IT IS ORDERED that the petitioner pay the following tax, penalty, and interest (calculated to May 27, 2014):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$615,610	\$153,903	\$169,925	\$939,438

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.
