BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NOS. 25715 & 25716
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	
	)	

On March 21, 2013, the staff of the Income Tax Audit Bureau (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 2009 and 2011, in the total amount of $62,928. An NODD was also issued to [Redacted], for taxable years 2009 through 2011, in the total amount of $0. A timely protest and petition for redetermination of both NODD's was filed by the petitioner. An informal hearing has not been requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NODD.

Petitioner is the sole shareholder of [Redacted] As the sole shareholder, any income or losses from the corporation would flow through to the petitioner's individual income tax returns. In 2012, [Redacted] experienced an audit of their Sales and Use Tax returns. At the time of the sales tax audit, the petitioner was not current with either his individual income tax returns or the corporate returns. The corporate returns were submitted for taxable years 2009 through 2012, after the completion of the sales tax audit. When the gross receipts reported on the [Redacted] returns 1120S were compared to the total sales reported on the previously audited Sales and Use Tax returns, they did not match. As a result, Audit issued an NODD to [Redacted], increasing the amount of gross receipts in each year to match the total sales reported on the sales and use tax returns. Because the business is an S-Corporation, with the taxpayer being the lone

shareholder, all income flowed through to petitioner's individual income tax returns, resulting in an NODD to the business for taxable years 2009 through 2011, in the total amount of $0, and an NODD to the petitioner for the same years, in the amount of $62,928. In addition to the adjustment to income, the NODD for taxable year 2011 included an adjustment to petitioner's Schedule A to allow only the amount of real estate taxes shown on petitioner's billing statement from the [Redacted] County Assessor's office. Both NODD's were protested by the petitioner.

The petitioner's protest centers on the original Sales and Use tax returns that were filed by the petitioner. The petitioner has stated in his appeal letter that he now believes that some, or all, of the self-filed Sales and Use tax returns for taxable years 2009 through 2011 are incorrect. However, the time for the petitioner to object, and propose changes, to the amounts shown on the Sales and Use tax returns, would have been prior to the expiration of the 63-day appeal time for the NODD that was issued by sales tax audit. The NODDs in this matter, with the exception of the Schedule A adjustment, simply make adjustments to match the amount of sales reported by petitioner on his sales tax returns, to those reported as gross receipts on his corporate, [Redacted] income tax returns. Audit allowed the petitioner several extensions of time in which to gather and submit additional information. The petitioner, through his appointed representative, submitted amended Sales and Use tax returns for the previously audited periods, but no information related to the NODDs issued by income tax audit. The petitioner's appointed representative stated in conversations with the auditor that there were numerous business expenses that were not claimed on the original returns and that amended returns would be filed. When the amended returns were not submitted, the petitioner's file was transferred to the Legal/Tax Policy Division for continuation of the appeals process.

The Commission sent the petitioner's appointed representative a letter on February 27, 2014, advising him of his client's alternatives for redetermining a protested deficiency determination. The representative responded, again asking for more time in which to organize the petitioner's business receipts and file amended returns. To date, no amended returns have been received. The Commission, believing the petitioner has had more than an adequate amount of time to organize information and submit amended returns, decided this matter on the information available.

The pass-through business income shown on the NODD was based on the total sales reported on the petitioner's self-filed Sales and Use tax returns for taxable years 2009 through 2011. The adjustment in taxable year 2011 for real estate taxes was made to allow only the amount of taxes paid by petitioner, as shown the [Redacted] County Assessor's records.

The petitioner has not provided the Commission with a contrary result to the determination of his income for taxable years 2009 through 2011. 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)... It is the taxpayer's 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 taxpayer may have had additional business expenses to offset the income; yet, if the taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and the taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931).

Having presented no information in support of his argument, the petitioner has failed to meet his burden of proving error on the part of the deficiency determination. Therefore, the

Commission must uphold the deficiency. The penalty and interest additions were calculated in conformity with Idaho Code §§ 63-3045 and 63-3046.

THEREFORE, the Notices of Deficiency Determination dated March 21, 2013, and directed to [Redacted] and to [Redacted] are hereby AFFIRMED and MADE FINAL.

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

YEAR	TAX	PENALTY	INTEREST	TOTAL
2009	$12,441	$1,866	$2,410	$16,717
2010	30,965	4,645	4,548	40,158
2011	7,500	1,125	800	9,425
			TOTAL DUE	$66,300

Interest is calculated through March 17, 2015.

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.

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