

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25903
)
)
Petitioner.) DECISION
)
_____)

BACKGROUND

On May 24, 2013, the Tax Discovery Bureau (TDB) 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 2007 through 2011, in the total amount of \$64,593. On July 26, 2013, the Petitioner’s CPA filed a timely protest. The CPA filed a Power-of-Attorney Form (POA) with the Commission to represent the Petitioner. On August 22, 2013, the file was transferred to the Legal/Tax Policy Division for resolution.

ISSUES

These are the issues stated in the protest letter and in the order listed by the POA:

1. Whether the income calculated as flow-through income from the Petitioner’s wholly owned S-corporation is correct.
2. Whether the wages used by the TDB in the tax calculations are correct.
3. Whether the personal exemptions used by the TDB in the tax calculations are correct.
4. Whether the marital status allowed by the TDB in the tax calculations is correct.
5. Whether the personal income tax liability as calculated by the TDB is correct.

DISCUSSION

The Petitioner did not submit Idaho individual income tax returns for taxable years 2007 through 2011. The Bureau sent the Petitioner a letter, dated March 26, 2013, notifying him of the missing returns. The Petitioner is the sole owner of an S-corporation that owns and operates an

[Redacted] in Boise. This is the fourth audit the Petitioner has had involving multiple years of not filing Idaho individual income tax returns. Past audits have resulted in filing and full payment of the tax. The Commission has made every effort to allow reasonable time for the Petitioner and the POA to prepare and file the missing tax returns.

On October 15, 2013, the Commission sent the Petitioner a letter that explained the methods available for redetermining an NODD. The POA called and asked for additional time, until January 15, 2014, to prepare the missing returns. A phone message was left with the POA on March 20, 2014, reminding her of the need to file these returns. No response was received from the POA or the Petitioner.

LAW

Idaho Code § 63-3030. Persons required to make returns of income. (a) Returns with respect to taxes measured by income in this chapter shall be made by the following:

(1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code.

Internal Revenue Code § 6012 requires that for the taxable year an individual that has gross income of greater than the sum of the exemption amount plus the basic standard deduction applicable to such an individual has to file a [Redacted] return. For taxable year 2007, the [Redacted] filing requirement for a single person under 65 was \$8,750. The Petitioner reached the age of 65 during 2011, so the filing threshold for that year was \$10,950. The net income from the S-corporation alone has ranged from \$116,161 up to \$215,322 during the years in question. That is in addition to the wages paid, so the Petitioner had a clear requirement to file Idaho individual income tax returns and pay the taxes due for those years.

CONCLUSION

First issue - The TDB used sales figures taken from the Idaho sales tax returns filed by the Petitioner's S-corporation. The payroll expense is from actual payroll information filed with the Commission. The TDB estimated their cost of goods sold to be fifty-six percent (56%) of the sales price. This was based on another similar business in the Boise area. Since this is a pass-through entity, the net income is reportable on the owner's individual return.

Second issue - The wages used in calculating the individual income tax liability were the amounts reported to the Commission by the S-corporation. The company was allowed an expense for an equal amount.

Third and fourth issues - Since the Petitioner did not file tax returns for the years mentioned, the TDB used the best information that was available. The latest individual income tax return filed was as a single person with one exemption.

Fifth issue - An NODD 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). The burden is on the taxpayer to show the deficiency is erroneous. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

Having presented no information in support of his position, the Petitioner did not meet his burden of proving error on the part of the deficiency determination. Absent information to the contrary, the Commission accepts Audit's calculation of Idaho income tax, penalty, and interest for those years.

The Penalties were assessed under Idaho Code § 63-3046;

(c) (1) In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of

five percent (5%) of the tax due on such returns for each month elapsing after the due date (including extensions) of such returns until the return is filed.

(g) Total penalties imposed under subsections (a), (c) and (d) of this section and under section 63-3033, Idaho Code, shall not exceed twenty-five percent (25%) of the tax due on the return.

THEREFORE, the NODD dated May 24, 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	\$14,390	\$3,598	\$3,945	\$21,933
12/31/08	9,719	2,430	2,040	14,189
12/31/09	9,080	2,270	1,450	12,800
12/31/10	6,924	1,731	778	9,433
12/31/11	5,616	1,404	407	<u>7,427</u>
			TOTAL	<u>\$65,782</u>

Interest is calculated through April 30, 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 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.
