

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 26118
[Redacted],)
)
)
) Petitioners.) DECISION
)
_____)

On November 22, 2013, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable year 2012, in the total amount of \$17,824.68.

On December 23, 2013, the taxpayers filed a timely protest and petition for redetermination. The taxpayers did not respond to a letter outlining their alternatives for redetermining a protested NODD nor did they request a hearing. The Commission, having reviewed the file, hereby issues its decision based on the information in the file.

ISSUE

The issue to be addressed in this decision is the disallowance of the credit for taxes paid to another state for taxable year 2012.

BACKGROUND

In 2013, the taxpayers filed a 2012 Idaho resident tax return claiming a credit for income tax paid to another state in the amount of \$19,192. The credit was claimed for taxes paid to the state of Washington for business and occupation tax on [Redacted].

LAW & ANALYSIS

Idaho Code section 63-3029 allows a credit for taxes paid to another state, subject to several qualifications and limitations. Idaho Code section 63-3029 states, in pertinent part, that “a resident individual shall be allowed a credit against the tax otherwise due under this chapter

for the amount of any income tax imposed on the individual, an S corporation...of which the individual is a shareholder (to the extent attributable to the individual as a result of the individual's share of the S corporation's...taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.” This section of the Idaho statute includes the following requirements: (1) the tax imposed by the other state must be an income tax; (2) if the tax is imposed on an S corporation, the tax must be based on the corporation's taxable income; and (3) the income taxed in the other state must also be subject to Idaho tax. These requirements are met when an Idaho resident shareholder of an S corporation pays individual income tax to another state on income from sources in that state. That tax is clearly an income tax and the same income is taxed by both states. However, these requirements are not met with respect to the Washington business and occupation tax. Washington law (RCW 82.04.220) provides the following concerning the business and occupation tax: (1) it is a tax for the act or privilege of engaging in business activities and (2) the tax is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be. Washington law (WAC 458-20-138) further provides the following concerning personal services rendered to others: (1) it refers generally to the activity of rendering services as distinct from making sales of tangible personal property or of services which have been defined in the law as sales or sales at retail, (2) persons engaged in the business of rendering personal services to others are taxable under the service and other activities classification upon the gross income from such business and (3) there must be included within gross amounts reported for tax, all fees for services rendered and all charges recovered for expenses incurred in connection therewith, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc. These provisions

clearly show that the Washington business and occupation tax, as it applies to personal services rendered, is a gross receipts tax and not an income tax.

CONCLUSION

According to Idaho Code section 63-3029, for a taxpayer to qualify for the Idaho credit for taxes paid to another state, the tax imposed by the other state must be an income tax. Washington law states that the business and occupation tax is measured by gross receipts of the business. Washington law further states that the business and occupation tax, as it applies to personal services rendered by [Redacted], [Redacted], [Redacted], etc., is a gross receipts tax and not an income tax. Since Idaho does not tax gross receipts, the gross receipts taxed by Washington do not constitute income also subject to Idaho tax. Therefore, the tax does not meet the requirements for the Idaho credit for taxes paid to another state.

THEREFORE, the Notice of Deficiency Determination dated November 22, 2013, and directed to [Redacted] and [Redacted] is APPROVED.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$17,357	\$781	\$663	\$18,801

Interest is calculated through June 2, 2014.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' 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.
