

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 25887
[Redacted],)
)
)
) Petitioners.) DECISION
)
_____)

BACKGROUND

On March 30, 2012, the Audit Bureau (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] (Petitioners) proposing income tax, penalty, and interest for taxable years 2008 through 2010 in the total amount of \$33,364. The Petitioners responded with additional information and that NODD was modified on June 10, 2013 to \$33,433. On August 5, 2013, the Petitioners filed a timely protest. A modified NODD was issued on November 13, 2013, following additional information being provided. The balance due remaining for income tax, penalty, and interest for taxable years 2008, 2009, and 2010, was \$14,743. On January 1, 2014, the file was transferred to the Legal/Tax Policy Division for resolution of the remaining issues. On February 3, 2014, the Commission sent a letter to the Petitioners, with a copy to their representative, outlining the options to resolve a protested case. Initially, the Petitioners requested a hearing, however, they asked for more time in which to prepare their response. On January 30, 2015, April 23, 2015, and July 22, 2015, calls were made and messages were left for both the Petitioners and their representative. No response was made by the Petitioners. The Commission makes this decision with the information available in the file.

ISSUES

These are the issues remaining after the November 13, 2013, modified NODD was issued.

1. Whether the Petitioners are entitled to take depreciation expense on [Redacted] that was built for resale and then rented out while waiting for the economy to improve enough to sell it.

2. Whether the audit adjustment reversing the rental income reported for the [Redacted] is correct.

3. Whether the Petitioners are entitled to claim the investment tax credit on a [Redacted] and some [Redacted] used for business. These credits were claimed by the Petitioners' S corporation and reported as a pass-through item. See Docket No. 25011 for discussion.

4. Whether the audit adjustment to the charitable contribution deductions is correct.

LAW AND DISCUSSION

Two of these issues are related and depend on the categorization of the [Redacted] built by the Petitioners. The first and second issues are, in fact, questioning whether the Petitioner was operating the [Redacted] as a business or using it for personal and entertainment purposes.

Issue 1. This issue has been examined by the Commission in Docket No. 23693, a sales tax audit involving the same [Redacted] and whether the Petitioner categorized the [Redacted] as inventory or as a personal asset. The conclusion of that audit was that the [Redacted] was a personal asset, not used in business.

The justification for claiming depreciation was that the [Redacted] had been loaned to charitable organizations for fund raising events. The income from these events was reported as rental income by the Petitioners. However, the Petitioners, in the protest letter dated, May 29,

2012, stated, “We donated the use of the [Redacted] to different groups for fundraisers. The [Redacted] rent was paid to the fundraising group, which is why we showed the amounts as donations.”

Issue 2. Since the rent was paid to the groups, the Petitioner did not have any income. There is no evidence that the [Redacted] was placed in service as a rental. The occasional use of the [Redacted] for a social event does not make it eligible for tax deductions. Correspondently, the income is not included in gross income under section 61.

IRC 280A Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

(g) Special rule for certain rental use.

Notwithstanding any other provision of this section or section 183, if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then—

(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61 . Underline added.

IRC section 262 no deduction shall be allowed for personal, living, or family expenses.

IRC section 274(d)(2) No deduction or credit shall be allowed for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

Issue 3. The Commission allowed these credits in the decision for Docket No. 25011. However, the Petitioners claimed the ITC in both 2008 and 2009. The NODD in this case only made an adjustment to the 2009 taxable year in the amount of \$147. We are reversing that adjustment and allowing the \$280 ITC for the 2008 taxable year. The \$559 claimed in the S corp. was not adjusted for the bonus depreciation that was claimed on the watercraft. The

amount of ITC allowed here has been reduced to reflect the bonus depreciation claimed. The interest and penalties have been adjusted accordingly.

Issue 4. The Petitioners cannot donate something and cannot claim a deduction for something that is not theirs. Donating the use of the [Redacted] may be generous, but it does not qualify as a charitable contribution for income tax purposes, see Internal Revenue Code section 170(f)(3).

IRC 170(f)(3)Denial of deduction in case of certain contributions of partial interests in property. (A) In general. In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

The Petitioner would only be eligible for actual out of pocket expenses related to the fundraising [Redacted] of qualified charitable organizations. No such expenses were claimed and the auditors found that only 2 of the organizations were qualified charitable organizations recognized by the [Redacted].

THEREFORE, the NODD dated June 10, 2013, corrected on November 13, 2013, and directed to [Redacted] and [Redacted] is hereby AFFIRMED as MODIFIED.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/08	\$4,680	\$ 349	\$1,222	\$ 6,251
12/31/09	5,796	1,606	1,235	8,637
12/31/10	0	0	0	<u>0</u>
			TOTAL	<u>\$14,888</u>

Interest is calculated through August 31, 2015, 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 Petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
