

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 31135
)
)
Petitioner.) DECISION
)
_____)

BACKGROUND

On December 13, 2013, the Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] proposing income tax, penalty, and interest for taxable year 2009 in the total amount of \$1,729. On January 7, 2014, [Redacted] (Petitioner) filed a timely protest. On April 19, 2014, the file was transferred to the Legal/Tax Policy Division for resolution. On June 14, 2014, a letter was sent to the Petitioner. No response was received. On June 18, 2015, the Petitioner was called and a copy of the letter was resent, along with the Idaho Power of Attorney Form in case she wished to have someone represent her. No response has been received to date and the Idaho Power of Attorney form has not been completed. The Commission now makes this decision with the information available.

ISSUES

1. Whether the Petitioner should be granted relief from a joint tax liability arising from her former spouse’s business.

DISCUSSION

In 2008, the Petitioner filed an individual Idaho Income Tax Return joint claiming a significant loss from an S-corporation that is owned by her now ex-husband. Under federal law, S corporations permit shareholders to elect a pass-through taxation system under which income

is subjected to only one level of taxation; the corporation's profits pass through directly to its shareholders on a pro rata basis and are reported on the shareholders' individual tax returns. S corporation losses that exceed the basis that the stock holder has are suspended until new income, capital contributions, or loans from the shareholder sufficient to claim the losses are made.

Audit disallowed the loss because of the lack of stock or debt basis in the corporation. In the request for redetermination, the Petitioner, via her divorce attorney, requested consideration for "Innocent Spouse Relief", similar to the [Redacted] treatment. The 2014 Idaho Legislature passed Senate Bill 1301 Relief from Joint and Severable Liability, which is codified as Idaho Code 63-3022T. The intent of the legislation is to provide what is known as innocent spouse relief for Idaho tax liabilities when the [Redacted] has determined that such relief should be provided for [Redacted] tax liabilities. The protest letter did not contest the disallowance of the losses, other than to say the Petitioner did not have the business records or control of the income or expenses of the business.

The protest letter included a copy of the Petitioner's divorce decree which says that each spouse will be responsible for their own debts incurred after January 1, 2009. However, a divorce decree is a civil contract between the spouses. The Commission is not a party to that type of contract and is not bound by the terms.

All [Redacted] determinations for innocent spouse relief from joint and several liabilities will be honored by the Commission regardless of the tax year at issue or when the relief was originally granted. The taxpayer will be responsible to prove that relief was granted by the [Redacted].

In the present case, there has been no relief granted by the [Redacted]. There is no other provision in Idaho law that allows any relief.

“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). The burden is on the taxpayer to show the deficiency is erroneous. Albertson’s, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Petitioner did not provide any information 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.

THEREFORE, the NODD dated December 13, 2013, and directed to [Redacted] and [Redacted] is hereby AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/09	\$1,438	\$72	\$310	\$1,820

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 Petitioner’s 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.
