

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
[Redacted])	DOCKET NO. 0-576-456-704
)	
Petitioner.)	DECISION
_____)	

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We uphold the Notice of Deficiency Determination (Notice) issued by the Income Tax Audit Bureau (Bureau) dated June 8, 2017. This means **you need to pay \$828** of tax, penalty, and interest for taxable years 2013 and 2014. The Commission now DEMANDS immediate payment of this amount.

[Redacted] (Petitioner) filed a timely protest and petition for redetermination. Petitioner was informed of his appeal rights. Petitioner did not request an informal hearing or provide any additional information after the issuance of the Commission’s hearing rights letter. The Commission, having reviewed the file, hereby issues its decision.

On his 2013 returns, Petitioner reported installment sale income from the sale of equipment used in Petitioner’s auto products business, [Redacted], and claimed the Idaho capital gains deduction with regard to the gains from these sales. The auditor disallowed the deductions due to lack of supporting documentation and, based upon the information received, concluded that the equipment sold did not meet the definition of tangible personal property used in Idaho by a “revenue producing enterprise” as defined in Idaho Code § 63-3002H (4).

The issue on appeal is whether Petitioner is entitled to the Idaho capital gains deduction with regard to the gains from the sale of the business equipment. Idaho Code § 63-3022H sets out the authority for the Idaho capital gains deduction. Under the statute, a taxpayer who reports capital

gain net income in determining Idaho taxable income is entitled to claim a sixty percent (60%) deduction for that income, if the capital gain resulted from the sale of “qualified property.”

Pursuant to Idaho Code § 63-3022H(3)(b), the list of “qualified property” includes “[t]angible personal property used in Idaho for at least twelve (12) months by a revenue producing enterprise.”

“Revenue producing enterprise” is defined in Idaho Code § 63-3022H(5), in part:

- (a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;
- (b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;
- (c) The feeding of livestock at a feedlot;
- (d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

Idaho Income Tax Administrative Rule 172 further addresses a “revenue producing enterprise.” It states, in part:

01. In General. Only the activities listed in Section 63-3022H (4), Idaho Code, qualify as a revenue-producing enterprise. (4-7-11)

02. Nonqualifying Activities. Examples of activities that do not qualify as a revenue-producing enterprise include the following: (4-7-11)

- a. Retail sales; (4-7-11)
- b. Professional or managerial services; (4-7-11)
- c. Repair services or other service related activities; (4-7-11)
- d. Transportation activities, unless they are an integral part of the taxpayer’s qualifying activity; (4-7-11)
- e. Telephone, cable, and internet services; (4-7-11)
- f. Agricultural services, such as horse training, veterinarian services, and crop dusting. (4-7-11)

03. Multiple Activities. If a business is engaged in both revenue-producing and nonrevenue-producing activities, tangible personal property must be used in the revenue-producing activity to qualify for the Idaho capital gains deduction. (3-20-97)

Petitioner reported gains from two sales of equipment on Internal Revenue Service (IRS) form 6252 and deducted capital gains from installment sale income on his 2013 Idaho individual income tax return. To assess whether the gain resulted sale was from “qualifying property,” the auditor

requested a description of the two pieces of equipment sold, including how the equipment was used in Petitioner's business, and a copy of the installment sales contract of the equipment. Petitioner responded that the list of equipment consisted of 2 welders, 1 band saw, 1 car 2-post lift, and 1 tube bender. Petitioner also provided a Memorandum of Agreement (Agreement) between [Redacted]

which Petitioner referenced as the Letter of Intent for the sale, and the Exhibit to Agreement, the "Asset Listing for 2013." According to the Agreement, Petitioner was to receive a payment of \$10,000 in 2013; \$5,000 in 2014; and \$5,000 in 2015; provided Petitioner remained continuously employed by [Redacted]. The Asset Listing Exhibit includes two pieces of property described as "EQUIPMENT." The first lists a Date Acquired of 8-01-09, Cost/Basis of \$3,944 and Prior Depreciation of \$2,867. The second lists a Date Acquired of 7-01-10, Cost/Basis of \$11,140 and Prior Depreciation of \$7,932. Petitioner did not respond to the auditor's request for verification of the amount of income received in each year from the sale.

In his protest, Petitioner provided the first page of his 2011 Idaho Personal Property Declaration on file with the [Redacted] Assessor's Office, which lists various items of equipment valued at approximately \$26,000. Taxpayers use this form to report taxable property to the county assessor for business personal property used in the operation of a business, per §§ 63-302, 63-313, and 63-602Y, Idaho Code. Petitioner did not verify which equipment on the declaration, if any, was included in the 2013 sale.

Petitioner argues that he meets the definition of a "revenue producing enterprise" because his business consisted of both retail and wholesale business. On appeal, he provided the auditor with more information about the items he manufactured for wholesale and warehoused in his shop. The items manufactured included a roll cage for jeeps, a custom bumper, an amplifier mount, and a door hanger for Jeep Wrangler doors.

While Petitioner's business may meet the definition of a revenue-producing enterprise in its assembly of a manufactured product and/or the storage, warehousing, distribution, or sale at wholesale of products of manufacturing, Petitioner did not produce sufficient information about the specific equipment included in the sale and how the equipment was used in his business to show that the equipment sold was "qualified property" under the Idaho capital gains deduction statute. This information was necessary because businesses engaged in both revenue-producing and nonrevenue-producing activities, such as Petitioner, must show the tangible personal property sold was used in the revenue-producing activity to qualify for the Idaho capital gains deduction. *See* IDAPA 35.01.01 Income Tax Administrative Rule 172.03.

If the equipment sold included "2 welders, 1 band saw, 1 car 2-post lift, and 1 tube bender" that were used for more than 12 months to manufacture auto products such as the custom bumpers and roll cages for vehicles, it is surprising that the equipment increased in value from an initial cost/basis of \$15,084 to the sale price of \$20,000. Petitioner did not respond to the auditor's request to 1) provide background, a general description of the business, types of products sold, and market to which it is sold, 2) describe how the equipment was used in his retail and wholesale business, and 3) list the name of businesses and customers to whom he sold products and/or services and provide invoices to support the transactions. In addition, Petitioner did not verify the amount of income received in each year from the installment sale. Petitioner did produce his W-2 from 2015 to satisfy the auditor that he did not receive any income from the sale in 2015, as he was no longer continuously employed by [Redacted] in that year. Petitioner's tax liability for 2015 remained unchanged by the Notice.

Failure to produce records supporting amounts or information shown on a return may result in appropriate adjustments by the Commission, including the disallowance of claimed deductions to

which the requested information relates and the presumption that the information not provided is prejudicial to the taxpayer's position in regard to the related issues. *See* IDAPA 35.02.01 Tax Commission Administration and Enforcement Rule 201.04.

In Idaho, it is well established that a Commission Notice is presumed to be correct, and the taxpayer bears the burden of showing the deficiency is erroneous. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986); *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Deductions are a matter of legislative grace, and the taxpayer bears the burden of showing that each deduction is allowable by statute. *See New Colonial Ice Co. v. Helvering*, 292 US. 435, 54 S.Ct. 788 (1934); *Higgins v. C.L.R.*, T.C.M. 1984-330, (1984). The burden rests upon the taxpayer to disclose his receipts and claim his proper deductions. *See United States v. Ballard*, 535 F.2d 400 (1976). If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed, and that taxpayer must bear his misfortune. *See Burnet v. Houston*, 283 US. 223, 51 S.Ct. 413 (1931).

Petitioner has not met his burden. Therefore, the Commission upholds the Bureau's calculation of Petitioner's Idaho income tax liability for taxable years 2013 and 2014.

The Bureau added statutory interest and the negligence penalty to Petitioner's tax deficiency. Petitioner provided no objection to the additional interest shown in the Notice. Idaho Code § 63-3046(a) provides that a 5 percent (5%) negligence penalty shall be assessed if any part of any deficiency is due to negligence or disregard of rule but without intend to defraud. Tax Commission Administration and Enforcement Rule 410.01 defines negligence as the breach of a duty or obligation, recognized by law that requires conformance to a certain standard of conduct. A penalty is justified when a Taxpayer makes unsubstantiated claims of deductions and does not

respond to requests to produce records substantiating items shown on the return. *See* IDAPA 35.02.01 Tax Commission Administration and Enforcement Rules 410.02.c. and 410.02.k. The Commission correctly included the negligence penalty.

The Notice dated June 8, 2017, and directed to [Redacted] is hereby APPROVED and MADE FINAL.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest computed to February 28, 2019:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2013	\$372	\$19	\$70	\$461
2014	307	15	45	367
2015	0	0	0	<u>0</u>
			TOTAL DUE	<u>\$828</u>

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2018.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2018,
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.
