

adjustment was also corrected to use the fair market percentage to allocate the adjustment to Idaho property.

Subsequently, Petitioner submitted a second amended Idaho partnership return of income attempting to recharacterize the rental income from the Idaho business as allocable nonbusiness income. Petitioner's second amended Idaho partnership return of income was not accepted and Petitioner protested. Audit accepted Petitioner's protest and transferred the matter for administrative review.

The Commission sent Petitioner a letter with two alternatives for redetermining a protested Notice. An informal hearing was held, but Petitioner did not provide any new information. The Commission decided the matter based upon available information.

LAW AND ANALYSIS

Idaho Code states in part that "business income"¹ means income arising from transactions and activity in the regular course of the taxpayers' trade or business and includes income from the acquisition, management, or disposition of tangible and intangible property. Idaho Income Tax Administrative Rule 333.01 defines business and nonbusiness income under the functional test. Business income includes income from

¹ **Idaho Code § 63-3027. Computing Idaho taxable income of multistate or unitary corporations.** The Idaho taxable income of any multistate or unitary corporation transacting business both within and without this state shall be computed in accordance with the rules set forth in this section:

(a) As used in this section, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from the acquisition, management, or disposition of tangible and intangible property when such acquisition, management, or disposition constitutes integral or necessary parts of the taxpayer's trade or business operations. Gains or losses and dividend and interest income from stock and securities of any foreign or domestic corporation shall be presumed to be income from intangible property, the acquisition, management, or disposition of which constitutes an integral part of the taxpayer's trade or business; such presumption may only be overcome by clear and convincing evidence to the contrary.

tangible and intangible property, if the acquisition, management or disposition of the property constitutes an integral or necessary part of the taxpayer's regular trade or business operations. Idaho Income Tax Administrative Rule 333.04 states in part that income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income, if the property is or was used in the taxpayer's trade or business operation.

In accordance with Idaho Code, Idaho State Income Tax Administrative rules, and the partnership agreement of the pass-through entity Petitioner did not provide credible information as to why the income in question should be treated as allocated non-business income.

CONCLUSION

The Commission upheld the adjustments made to Petitioner's Idaho partnership return of income for taxable year 2014. On appeal, a deficiency determination issued by the Commission "is presumed to be correct, and the burden is on the taxpayer to show that the Commission's decision is erroneous." *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence.

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

DATED this _____ day of _____ 2019.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019, 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:

Receipt No.
