

The backup withholding provisions require pass-through-entities to withhold amounts from certain pass-through-owners income (Idaho Code section 63-3036B). There are exceptions to the rule, but the exceptions do not apply in this case. The withheld amounts are remitted to the Tax Commission along with an informational return (Idaho Code section 63-3036B(4)).

The pass-through-entities must furnish a statement to the pass-through-owners stating the amount of tax withheld (Idaho Code section 63-3036B(5)). A pass-through entity is liable to Idaho for amounts of tax required to be withheld and paid under the provisions of this section. (Idaho Code section 63-3026B(6)). The pass-through-owners receive credit on their tax returns for the tax paid through backup withholding (Idaho Code section 63-3072(b)).

Accordingly, based on the facts presented, Petitioner can claim a \$259 credit for backup withholding under Idaho Code section 63-3072(b). According to the Form ID K-1 provided to Petitioner and the Tax Commission by the pass-through-entity, the pass-through-entity was withholding on behalf of the owner.

Idaho Code section 63-3026B(6) is clear that pass-through-entities are responsible for withholding amounts from certain pass-through-owners income and remitting the withheld amounts to the Tax Commission. Idaho Code does not hold the pass-through-owner responsible for the pass-through-entities failure to remit withholding. Therefore, Petitioner can claim a \$259 credit for backup withholding under Idaho Code section 63-3072(b).

However, it is important to note that depending on the facts and circumstances, the Tax Commission may delay a pass-through owner's refund until the pass-through entity remits the withholding. To promote effective tax administration the Tax Commission may delay the refund in the following cases, none of which apply in this case:

- Closely held business activities
- Family partnerships

- First time filers (pass-through owner or pass-through entity)
- Indicators of fraud or abuse
- Collections issues

On appeal, a deficiency determination issued by the Tax 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 Tax Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner provided adequate evidence.

THEREFORE, the Notice of Deficiency Determination dated November 7, 2019, is hereby CANCELED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

An explanation of Petitioner’s right to appeal this decision is included with this decision.

DATED this _____ day of _____, 2020

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2020 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.
