

During the routine matching of reported withholding to withholding payments, the Tax Discovery Bureau (Bureau) found that Petitioner did not remit the withholding stated on Petitioner's nonresident partner's form ID-K1. The Bureau sent Petitioner a billing letter explaining that the Tax Commission did not receive payment of the income tax reported on the ID-K1. The Bureau explained that by coding the nonresident partner's distribution with a "W", Petitioner was telling the Tax Commission that it was going to pay the partner's income tax on her distributive share of Petitioner's income. The Bureau also explained that Petitioner computed the tax incorrectly by splitting the guaranteed payments equally rather than using the amounts each partner received.

Petitioner responded stating that it disagreed with the Bureau's assessment. Petitioner stated its partners agreed that all associated tax due was to be paid by the nonresident partner. Petitioner stated further that since 2019, operations had ceased, and it has been dissolved by the Idaho Secretary of State.

The Bureau considered Petitioner's response a protest of the billing letter, so to make everything official, the Bureau sent Petitioner a Notice of Deficiency Determination and a letter acknowledging its protest. The Bureau then referred the matter to the Tax Commission's Appeals Unit (Appeals).

Appeals reviewed the matter and sent Petitioner a letter that discussed the methods for redetermining a Notice of Deficiency Determination. Petitioner did not respond. Appeals sent Petitioner a follow-up letter, but still Petitioner did not respond. Seeing that Petitioner had the opportunity to provide additional information or to argue its position further, the Tax Commission decided the matter based on the information available.

LAW AND ANALYSIS

Petitioner is a pass-through entity with a nonresident partner. Idaho Code section 63-3036B provides that pass-through entities, transacting business in Idaho, with nonresident individual owners, shall withhold tax on the individual's share of income from the pass-through entity. Since Petitioner has a nonresident partner, Petitioner falls under the purview of Idaho Code section 63-3036B.

Idaho Code section 63-3036B requires Petitioner to provide a statement to each individual for whom it withheld tax on their behalf and to file a withholding return with the Tax Commission. Petitioner provided a statement to its partner but did not file a withholding return with the Tax Commission. Petitioner's statement to its nonresident partner, the ID-K1, stated that Petitioner withheld \$1,081 on behalf of its nonresident partner. However, the Tax Commission has no record of receiving a payment of that amount or any other payment.

When the Bureau discovered the mismatch between declared withholding and withholding payment, the Bureau reviewed Petitioner's Idaho return and found that in addition to not remitting the withholding, Petitioner incorrectly computed the nonresident partner's tax for the withholding. Petitioner's nonresident partner received a guaranteed payment from Petitioner in 2019. Idaho Code section 63-3026A provides that guaranteed payments, from a partnership transacting business in Idaho, are sourced to Idaho based upon the Idaho apportionment factor of the partnership. Petitioner's Idaho apportionment factor was 100 percent in 2019; therefore, 100 percent of the nonresident partner's guaranteed payment is reportable to Idaho. However, rather than computing the nonresident partner's withholding on the total of the partner's Idaho source income, Petitioner computed the withholding on the partner's profit percentage share of net

business income subject to apportionment. The Bureau corrected this miscalculation in the Notice of Deficiency Determination.

In Petitioner's protest, it stated that its partners agreed that the nonresident partner would pay her Idaho tax associated with Petitioner. However, Petitioner has not provided a copy of the Nonresident Owner Agreement nor has its nonresident partner filed an Idaho income tax return to relieve Petitioner of its obligation. Therefore, because Petitioner's nonresident partner has not filed and reported her distributive share of Petitioner's income and since Petitioner did not pay any withholding on behalf of its nonresident partner, the Tax Commission upholds the Bureau's Determination.

CONCLUSION

Petitioner is an Idaho pass-through entity with a nonresident individual owner. As such, Petitioner is required to withhold from the nonresident individual owner's distributive share of income an amount equal to the Idaho tax on that amount. Petitioner reported withholding on the nonresident individual's ID-K1 but did not pay those withholdings to the Tax Commission. Petitioner's nonresident owner has also failed to file an Idaho income tax return. Therefore, seeing that Petitioner is required by Idaho Code section 63-3036B to withhold and pay, to the Tax Commission, an amount equivalent to the tax on the distributive share of income for a nonresident owner, the Tax Commission upholds the Notice of Deficiency Determination.

The Bureau added interest and penalties to Petitioner's Idaho tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated June 21, 2022, and directed to _____ is AFFIRMED.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/2019	\$1,122	\$56	\$150	\$1,328

Interest is calculated to March 15, 2024.

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

DATED this _____ day of _____ 2023.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2023,
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.
