

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-593-956-352
	)	
	)	
Petitioner.	)	DECISION
_____	)	

(Petitioner) protested the Notice of Deficiency Determination dated February 19, 2021. Petitioner disagreed with the Income Tax Audit Bureau’s determination that its activity was not for profit. The Tax Commission reviewed the matter and for the reasons stated below upholds the Notice of Deficiency Determination.

**BACKGROUND**

Petitioner filed its 2018 and 2019 Idaho S-corporation income tax returns claiming losses from a schedule F activity of \_\_\_\_\_ This activity was previously reported by Petitioner’s members on their individual income tax returns. The Income Tax Audit Bureau (Bureau) reviewed the activity on the members’ income tax returns and determined the activity was a not-for-profit activity. Based on that determination, the Bureau disallowed the activity on Petitioner’s 2018 and 2019 Idaho S-corporation income tax returns. As a result of the activity being disallowed, adjustments were also made to Petitioner’s section 179 depreciation, Idaho bonus depreciation subtraction, and the Idaho investment tax credit. The Bureau sent Petitioner a Notice of Deficiency Determination that Petitioner protested.

Petitioner protested the Bureau’s determination that certain business deductions are disallowed because its \_\_\_\_\_ business is not for profit. Petitioner disputes the denial of legitimate business losses, bonus depreciation subtractions and investment tax credits. Petitioner stated the Bureau’s determination that its shareholders’ \_\_\_\_\_ activity was a not-for-profit activity in

2016 and 2017 is incorrect and the follow-up adjustments to the activity on its 2018 and 2019 returns are likewise incorrect. Petitioner referred extensively to its shareholders' protest stating the recited facts and law stated there support its contentions that the activity is a legitimate for-profit business. Petitioner stated that in its shareholders' protest they provided written statements and documentary substantiation of the activity and have established that each and every factor outlined in Treasury Regulation section 1.183-2(a) supports the claim that the activity is operated on a for-profit basis. Petitioner requested an informal, in person hearing and asked that any ruling issued as a result of such hearing be made in writing.

The Bureau acknowledged Petitioner's protest and referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals sent Petitioner a letter acknowledging its request for a hearing and asked for dates when Petitioner was available for a hearing. Petitioner's representative (Representative) responded, and a hearing was scheduled. However, during a discussion with Representative prior to the hearing, it was decided that Appeals would review the information and documentation Petitioner provided, make any additional requests for documentation, discuss Appeals concerns with Representative, and then have a hearing if necessary.

After months of gathering, submitting, and reviewing Petitioner's information and documentation, it was decided to schedule a hearing for Representative to present Petitioner's position on the not-for-profit issue. The hearing was held on March 5, 2024, wherein it was agreed that Representative would provide additional information and documentation regarding some specific questions that came up during the hearing. For more information and details of the hearing, see the Tax Commission's decision for Petitioner's shareholders in Docket No. 0-293-656-576.

Representative provided the additional information and documentation as well as other documentation Appeals later requested. The Tax Commission reviewed the additional information and hereby issues its decision.

### **LAW AND ANALYSIS**

Petitioner is a limited liability company that filed its certificate of organization with the Idaho Secretary of State on [redacted] Petitioner was a single member disregarded entity for income tax purposes until [redacted] when Petitioner's certificate of organization was amended to add another member. On January 13, 2021, after the Bureau started its audit, Petitioner's members submitted a 2016 Idaho amended individual income tax return signed August 1, 2019, electing Petitioner to be treated as an S-corporation for income tax purposes. Petitioner did not file an Idaho S-corporation for 2016, but when a return was provided during the appeal process, a review of the return revealed that Petitioner only reported its shareholders' schedule C [redacted] business. (Petitioner's members are hereinafter referred to as shareholders because of the S-corporation election.) Petitioner did not start reporting the [redacted] activity on its income tax return until tax year 2018.

The Bureau's audit of Petitioner's [redacted] activity began with tax year 2016 and Petitioner's shareholders' individual income tax return. The Bureau determined the activity was not for profit and disallowed the claimed expenses as provided in Internal Revenue Code section 183. Since the activity reported on Petitioner's 2018 and 2019 returns was a continuation of the activity on the shareholders' returns, the Bureau disallowed the claimed expenses on Petitioner's 2018 and 2019 returns as being not for profit. In addition to disallowing the expenses for the activity, the Bureau made adjustments to Petitioner's section 179 depreciation, Idaho bonus depreciation subtraction, and Idaho investment tax credit for the assets related to the [redacted] activity.

The Tax Commission reviewed the activity in its decision on the activity on the shareholders' individual income tax returns for 2016 and 2017. The Tax Commission's decision is more fully explained in Docket No. 0-293-656-576. Suffice it to say, the Tax Commission found the activity not for profit and hereby upholds the Bureau's adjustment to Petitioner's 2018 and 2019 income tax returns. As for the Bureau's adjustments to Petitioner's section 179 depreciation, Idaho bonus depreciation subtraction, and Idaho investment tax credit, the Tax Commission upholds those adjustments as well since the assets were acquired for use in the activity. In addition to being used in the activity, Petitioner claimed the Idaho investment tax credit on a 2013 Ram 1500 pickup. This vehicle's gross vehicle weight is less than 8,000 pounds. Idaho Code section 63-3029B specifically excludes vehicles whose gross weight is less than 8,000 pounds for purposes of the Idaho investment tax credit. Therefore, based on statute and the vehicles specifications, the 2013 Ram 1500 pickup does not qualify for the investment tax credit.

### **CONCLUSION**

Petitioner is a limited liability company that for two of the years in the audit period was a disregarded entity and reported on its member's individual income tax return. For the other two years of the audit period, Petitioner elected to be treated as an S-corporation. Petitioner claimed expenses from a activity on its S-corporation returns. The activity is a continuation of the activity claimed and reported on Petitioner's shareholders' individual income tax returns since at least the early 2000s. The Tax Commission determined the activity was a not-for-profit activity as explained in its decision on Docket No. 0-293-656-576. Since the activity is a continuation of the activity found to be not for profit on Petitioner's shareholders' income tax returns and Petitioner has not changed anything in the operation of the activity in the years under

consideration, the Tax Commission finds the activity claimed on Petitioner's 2018 and 2019 returns to be a not-for-profit activity.

THEREFORE, the Tax Commission upholds the Notice of Deficiency Determination dated February 19, 2021, directed to Since Petitioner is a pass-through entity, any additional tax owed is passed-through to its shareholders.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2024,  
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.

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