

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-602-762-752
,)	
)	
Petitioners.)	DECISION
_____)	

(Petitioners) protested the Notice of Deficiency Determination dated February 25, 2021. Petitioners disagreed that they received constructive dividends from _____ as a result of _____ building a shed on property owned by _____ (Trust). The Tax Commission, having reviewed the matter issues its decision cancelling the Notice of Deficiency Determination.

BACKGROUND

_____ is a shareholder of _____ an S-Corporation. _____ is the sole shareholder of _____ a C-Corporation. In 2018, _____ with the permission of Trust, built a storage shed on property owned by Trust. In an audit of _____ the Bureau determined the shed was built for the personal use of Petitioners. The Bureau stated _____ paid for the construction of the shed for Petitioners’ personal entertainment and to store personal items. The Bureau stated the shed was not built to store _____ farm equipment. The Bureau determined the cost of the shed to be a constructive dividend to Petitioners. The Bureau added the constructive dividend to Petitioners’ 2018 and 2019 Idaho individual income tax returns and sent them a Notice of Deficiency Determination.

Petitioners protested the Bureau’s determination stating the auditor improperly concluded that the shed was personal use property rather than primarily used for business. Petitioners stated it is their belief the auditor came to this conclusion because the shed is located next to a body of

water, which should have no bearing on the determination. Petitioners stated this same shed was disallowed on [redacted] income tax return that is also under protest. Petitioners believe that once the Tax Commission reviews all the information regarding the shed in the [redacted] protest, the adjustment to their returns will become moot. However, in the alternative, Petitioners argue if any of their personal expenses were paid by [redacted] they would have intended them to be loans from [redacted]

The Bureau acknowledged Petitioners' protest and referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals sent Petitioners a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners requested a telephone hearing. Appeals scheduled the hearing and conducted it on May 5, 2022. The hearing was held in conjunction with the hearing for [redacted] Regarding Petitioners, the hearing primarily focused on the business use of the shed by [redacted] and the fact that Petitioners are not shareholders of [redacted] Thus, bringing up the question as to whether constructive dividends can even be attributed to Petitioners.

LAW AND ANALYSIS

In its audit of [redacted] the Bureau reviewed documentation of the materials used to construct the shed. Based on the facts that the materials included kitchen and restroom fixtures and plumbing, windows, and a sauna along with being built between two bodies of water that make up the Teton River, on property owned by Trust which Petitioners are the likely beneficiaries, the Bureau determined the shed was built for the personal use of Petitioners.

[redacted] argued and Petitioners echo that the shed was built to store farm equipment, supplies, and feed. They further argued that the kitchen, restroom, and sauna facilities were for the general use of [redacted] employees. In fact, [redacted] stated it was a prerequisite that their

employees have access to the shed for them to build the shed on Trust's property.

provided a lay out of the shed and pictures showing the farm equipment stored in the shed.

In the Tax Commission review of _____ protest, Docket No. 0-529-020-928, the Tax Commission found the shed's primary purpose was for use in the trade or business of _____. The Bureau presented virtually no evidence that the shed was built for Petitioners' personal use and entertainment. On the other hand, Petitioners, via _____ provided pictures of farm equipment stored in the shed and an affidavit signed by employees of _____ stating they had access to and regularly used the shed as a fringe benefit of their employment. Therefore, based on its decision on Docket No. 0-529-020-928, the Tax Commission finds Petitioners did not receive a constructive dividend as a result of the shed being built on the property of Trust.

CONCLUSION

The Bureau determined Petitioners received a constructive dividend for a shed built by a C-Corporation that Petitioners indirectly owned through another entity. The shed was built on property owned by a trust that Petitioners may be the beneficiaries. The Bureau asserted the shed was built for the personal use of Petitioners.

Upon reviewing the facts surrounding the construction of the shed, the Tax Commission determined the shed was built for and primarily used in the trade or business of _____. Because the shed is used in the trade or business of _____ the expense of building the shed is a business expense of _____ and not a personal expense of Petitioners. Since constructive dividends occur when personal expenses are paid or a personal benefit is conferred on a shareholder, the determination that the shed is a business asset removes it from the realm of constructive dividends. Therefore, Petitioners did not receive a constructive dividend and there should be no additions to Petitioners' income for the tax years 2018 and 2019.

THEREFORE, the Notice of Deficiency Determination dated February 25, 2021, and
directed to _____ is CANCELLED.

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

DATED this _____ day of _____ 2022.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2022,
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.
