

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of Protest of)
) DOCKET NO. 14565
[REDACTED],)
) DECISION
)
Petitioner(s).)
_____)

On December 10, 1999 the Tax Discovery Bureau of the Idaho State Tax Commission (Bureau) issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income taxes, penalties, and interest for tax years 1994 through 1997 in the total amount of \$25,546.

The taxpayers filed a timely protest. They did not request a hearing but rather chose to provide their actual returns. The Tax Commission, having reviewed the file, hereby issues its decision based thereon.

The Tax Commission obtained information showing the taxpayers operated a childcare center in Idaho during all the years at issue. The records retained by the Tax Commission show [Redacted] signed an application for an Idaho employee-withholding permit for the childcare center on or about August 2, 1992. The taxpayers were listed in that application as two of the three "owner, partners, shareholders or corporate officers." In addition, wages were reported to the Idaho Department of Labor as being paid to [Redacted] by the childcare center. The taxpayers did not file Idaho individual income tax returns for any of the years at issue.

After efforts to secure the returns from the taxpayers were unsuccessful, the Bureau prepared provisional income tax returns on the taxpayers' behalf. The Bureau sent the taxpayers a Notice of Deficiency Determination that they appealed. They promised to have the returns submitted by April 1, 2000. When the returns were not delivered to the Tax Commission as promised, the taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review.

During the Tax Commission's appeal process, the taxpayers submitted actual returns for all of the years in question. However, because the 1996 and 1997 returns did not include all of the income shown as received by the taxpayers during those years, the taxpayers were notified that the returns for those two years would not be accepted as filed. At that time, the taxpayers indicated that they would send corrected returns no later than November 10, 2000. The Tax Commission has not received the corrected tax returns. In fact, the taxpayers have not contacted the Tax Commission since October 2, 2000 when the inaccurate returns were received.

The Idaho returns for 1994 and 1995 that were submitted by the taxpayers are accepted as filed in lieu of the provisional returns prepared by the Bureau. However, acceptance of the taxpayers' actual returns does not preclude examination at a later date.

The taxpayers' 1994 Idaho return indicated an \$80 refund due to the taxpayers. Idaho Code §§ 63-3035 and 63-3072 state:

63-3035(e). . . . Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his taxable income as computed under the provisions of this act, as the same has been or may hereafter be amended, or where his income is not taxable under this act, the state tax commission shall, after examining the annual return filed by the employee in accordance with this act, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be made to an employee who fails to file his return, as required under this act, within three (3) years from the due date of the return in respect of which the tax withheld might have been credited.** In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)

63-3072(c). . . Except as provided in subsection (e) of section 63-3035,

Idaho Code, **a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed.** However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions. (Emphasis added.)

Because the period of limitation with respect to claiming a refund or credit of taxes for 1994 had expired long before the taxpayers' return was submitted for filing, no credit or refund is allowed for that year.

The taxpayers' 1995 Idaho return indicated taxes due. Additions to the 1995 return were made in accordance with the provisions of Idaho Code §§ 63-3046(c) and 63-3045(6)(a) which state:

Idaho Code § 63-3046(c) In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

Idaho Code § 63-3045(6)(a) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under provisions of paragraph (b) of this subsection from the date prescribed for the payment of the tax. . .

The Idaho returns the taxpayers submitted for 1996 and 1997 did not include all of the income shown in the IRS records. Copies of the taxpayers' 1099s show the taxpayers received an additional \$40,622 in income from stocks and bonds and \$75 of interest income during 1996 and \$29,180 in income from stocks and bonds, \$31 of interest income and \$65,000 income as a result of the sale of real estate during 1997. None of this income was reported by the taxpayers.

When the Tax Commission notified the taxpayers that the tax returns in question listed only wages and did not include the other income shown in federal records as having been received by

them, the taxpayers said they would furnish corrected returns. However, no such returns or additional information has been received.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Commission, 110 Idaho 572 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Albertsons, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The 1996 and 1997 Idaho income tax returns that were submitted by the taxpayers are corrected to reflect the inclusion of all income shown in federal records as having been received by them during each of those years.

WHEREFORE, the Notice of Deficiency Determination dated December 10, 1999, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following taxes, penalties, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -
1995	704	176	275	1,155
1996	3,162	791	978	4,931
1997	8,223	2,056	1,828	<u>12,107</u>
			TOTAL	<u>\$18,193</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this _____ day of February, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of February, 2001, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
