

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of Protest of)	
)	DOCKET NO. 14777
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On March 20, 2000, the staff of the Tax Discovery Bureau (Bureau) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) for the 1990 through 1995 taxable years, proposing tax, penalty and interest in the total amount of \$4,794.

On May 17, 2000, the taxpayer made a timely protest and request for redetermination. The taxpayer did not request a hearing, but did submit additional information for consideration. The Tax Commission, having reviewed the file, hereby issues its decision.

The Bureau received information [Redacted] indicating that the taxpayer may have an Idaho filing requirement for the 1990 through 1995 taxable years. The Bureau researched the Tax Commission's records and found the taxpayer had not filed an Idaho income tax return for those taxable years.

The Bureau contacted the taxpayer to determine whether the taxpayer had a filing requirement with the State of Idaho. The taxpayer did not respond to the Bureau's inquiry; therefore, the Bureau [Redacted] determined that the taxpayer had an Idaho filing requirement. [Redacted]. The [REDACTED] information showed the filing status for the taxpayer was married filing separate, with no dependents. The Bureau prepared returns for the taxpayer and sent the taxpayer a Notice of Deficiency Determination (NODD).

The taxpayer appealed the Bureau's determination and stated that the correct filing status for the years in question was married filing joint. Additionally, the taxpayer stated that he had

three dependent children whom he was eligible to claim as dependents. The taxpayer provided the children's social security numbers and dates of birth.

The Tax Commission (Commission) sent the taxpayer a hearing rights letter explaining the process of appeal and request for redetermination. The taxpayer did not request a hearing and, aside from the information regarding his dependent children, did not submit additional information for consideration.

The taxpayer did not submit information that contradicted the taxable income amounts in the NODD. Therefore, the Commission upholds the [Redacted] information to determine that the taxpayer had an Idaho filing requirement and to calculate the taxpayer's Idaho taxable income for the years in question.

Idaho Code § 63-3031(a) gives a husband and wife the option to file jointly. Since the taxpayer did not file his 1990 through 1995 returns, the taxpayer has not elected to file as a joint filer for these years, and the Commission cannot make that election for him. Accordingly, the Commission upholds the taxpayer's filing status as married filing separate in the NODD.

The Commission recalculated the taxpayer's Idaho income tax liability allowing two additional exemptions. The taxpayer provided information regarding three dependent children; however, since the taxpayer's filing status is married filing separate and Idaho is a community property state, the Commission allowed only two of the dependent children as exemptions. The recalculation resulted in tax due for the 1990 and 1992 through 1995 taxable years and a refund for the 1991 taxable year. However, Idaho Code § 63-3072 prohibits refunding or crediting the tax for a return not filed within three years after the due date of the return. The statute of limitations for the 1991 income tax return expired April 15, 1995. Since the taxpayer did not

submit his 1991 return before the statute of limitations expired for that year, no refund or credit is available.

The NODD included additions for penalty and interest in accordance with the provisions of Idaho Code §§ 63-3046(c) and 63-3045. The Commission upholds those additions and finds them appropriate as applied to the modified tax liability.

WHEREFORE, the Notice of Deficiency Determination dated March 20, 2000, is hereby MODIFIED in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1990	\$ 27	\$ 10	\$ 24	\$ 61
1991	\$ 0	\$ 0	\$ 0	\$ 0
1992	\$ 164	\$ 41	\$ 108	\$ 313
1993	\$ 47	\$ 12	\$ 26	\$ 85
1994	\$ 111	\$ 28	\$ 52	\$ 191
1995	\$ 292	\$ 73	\$ 114	\$ 479
			TOTAL DUE:	<u>\$1,129</u>

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

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ___ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, 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]
[Redacted]

Receipt No.: 7[Redacted]

ADMINISTRATIVE ASSISTANT 1