

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15326
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On January 16, 2001, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for refund of individual income tax of \$696 for 1999.

The taxpayers filed a timely protest and petition for redetermination of the refund denial. They did not submit additional information. The Tax Commission has reviewed the file, is advised of its contents and hereby issues its decision.

The taxpayers timely filed their 1999 Idaho individual income tax return indicating a refund due to them. Because a W-2 was not attached to support the withholding claimed in the return, the Bureau sent the taxpayers a correction letter wherein they were advised that, because the withholding could not be identified, no credit could be claimed and a small amount of income tax was due for the year. [Redacted] telephoned the Bureau to voice his objections. He explained that his wife's employer had not withheld Idaho income tax and did not issue a W-2 as required by federal law. He said the withholding was the responsibility of the employer, not the taxpayer and his wife.

The Bureau issued a deficiency notice and the taxpayers appealed. During the appeal process, the taxpayers submitted a payment of \$40.14, which represented payment of the 1999 individual income taxes and interest without taking credit for the withholding. However, they did not withdraw their appeal to the denial of the refund.

The taxpayers' file was transferred to the Legal/Tax Policy Division for administrative

review. In response to a letter from the Tax Appeals Specialist advising the taxpayers of their appeal rights, the taxpayers sent a letter stating the taxpayers' position. They asked for a telephone conference, which was held on March 8, 2001.

During the telephone conference, [Redacted] reiterated the sequence of events that led up to the claim for refund, which the taxpayers had referred to in their various letters. [Redacted] was employed as a housekeeper for the years 1998 and 1999. At no time during her employment did [Redacted] employer ask her to complete a federal W-4 form to guide the employer in withholding the correct amount from [Redacted] paychecks. The employer did not withhold, report, or pay over to the Internal Revenue Service (IRS) or the State Tax Commission any amount from [Redacted] gross income. The employer did furnish [Redacted] with a federal form 1099 showing the income as "miscellaneous income."

The taxpayers objected stating that it was the employer's responsibility to require the employee to complete a W-4 form and withhold state and federal income taxes from the employee's salary. They referred to a federal brochure *Internal Revenue Service's Employer's Tax Guide* wherein it is stated in a section talking to an employer: "**Collecting under withheld taxes from employees.** If you withheld no income, social security, or Medicare taxes or less than the right amount from an employee's wages, you can make it up from later pay to that employee. But you are the one who owes the underpayment."

The taxpayers also provided the Tax Commission with copies of documents received from the IRS including a letter to [Redacted] in response to her request for a determination as to status of her Federal employment tax. The IRS advised [Redacted]: "We hold you to be an employee for Federal tax purposes for the years(s) 1998, 1999." The letter explained that, as an employee, she was liable for her share of Federal Insurance Contributions Act tax obligations but she was not

responsible to pay self-employment taxes on that income.

The other copies of documents included: (1) Form 4598, *Form W-2, or 1099 Not Received or Incorrect*, showing [Redacted] did not receive a W-2; (2) Form 1099-Misc., showing \$13,179.92 received by [Redacted] during 1999; and (3) Typed instructions asking an employer to choose the statement that applied to the situation. A check was placed next to the statement regarding a 1099 and a hand-written note said a 1099 had been sent and the reported income was correct. The note also explained that the former employer had died in October 1999. It was signed by, “daughter-in-law.”

The taxpayers have asked the Tax Commission to refund taxes to them that were never withheld from [Redacted] gross pay. If the taxpayers were to receive a refund of monies that were never withheld from her pay check and never submitted to the Tax Commission by anyone, the taxpayers would, in fact, be receiving a portion of [Redacted] income twice – once when she received her paychecks and once when she received the refund.

During the telephone conference, [Redacted] expressed his belief that [Redacted] was actually paid her net income. He said her gross income should have been at a higher rate to cover the taxes that should have been withheld. However, [Redacted] employment agreement is a separate matter from the claim for credit of withholding that was not withheld.

Individual income taxes are the responsibility of the individual who received the income. There is no provision in Idaho code that would require an employer to pay the individual income taxes of an employee because the employer neglected to have the employee complete a W-4 and did not withhold income taxes from the employee’s pay.

THEREFORE, the letter denying the refund dated January 16, 2001, directed to [Redacted], is APPROVED, AFFIRMED, AND MADE FINAL.

An explanation of the taxpayers' 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] Receipt No. [Redacted]
[REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1