

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15532
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On July 21, 2000, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Dec'd) (taxpayer), proposing income tax, penalty, and interest for taxable years 1993 and 1994, in the total amount of \$27,601.

The taxpayer's representative filed a timely protest. A hearing was neither requested nor held. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

[Redacted].

Idaho Code § 63-3045 (1)(a) states:

Notice of redetermination or deficiency -- Interest.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

The Bureau issued a deficiency notice to the deceased taxpayer in care of the person who appeared to be the taxpayer's personal representative. That person wrote back to say he was not appointed the taxpayer's personal representative. He said he was forwarding the notice to the

personal representative and to [Redacted], Certified Public Accountant, who had been given power of attorney to represent the taxpayer. He included a copy of the taxpayer's death notice, a copy of the Power of Attorney, and a copy of Letters of Testamentary appointing the taxpayer's daughter, [Redacted], as the taxpayer's personal representative.

The taxpayer's personal representative sent the Bureau a letter asking the Tax Commission to correct any records that did not show her as the taxpayer's personal representative. She said she had appointed [Redacted] (POA) to represent her before the Tax Commission. She included copies of supporting documents.

On September 8, 2000, the Bureau received a letter from the POA. In that letter he said the taxpayer was not required to file an income tax return for 1993 because she died in 1992. He said all income for 1993 and 1994 had been reported in Form 66, which had been filed on behalf of the taxpayer's estate.

After further research, the Bureau wrote back to the POA and advised him the portion of the deficiency determination addressing 1994 was cancelled. The letter indicated no Form 66 had been filed for 1993 and the deficiency determination for 1993 remained at issue. Further, the Bureau acknowledged a telephone conversation with the POA wherein the POA indicated he had not filed a 1993 Idaho income tax return on the taxpayer's behalf, but he was intending to file that return by December 8, 2000. The 1994 tax year will not be a part of this decision.

The taxpayer's 1993 Idaho income tax return was not received by December 8, 2000 as promised. The taxpayer's file was transferred to the Legal/Tax Policy Division and the POA was notified of the taxpayer's appeal rights. No response to that letter was received.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). The

burden is on the taxpayer to show that the tax deficiency is erroneous. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Bureau prepared the deficiency notice and tax return based on information received from the IRS. The Tax Commission confirmed the accuracy of the federal information by examining copies of 1099s and Tax Commission records. Those records show the taxpayer's stocks and bonds and dividends were liquidated in 1993. At the time of sale, those investments were still in the taxpayer's name and social security number. The taxpayer's representative did not report the income as income to the taxpayer's estate and no Idaho income taxes were paid. Neither the appointed personal representative nor the chosen Power of Attorney has presented evidence to dispute the claim of Idaho income taxes due. Absence evidence to the contrary, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated July 21, 2000, is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for 1993:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$10,990	\$2,748	\$6,446	\$20,184

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 enclosed with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 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] Receipt No. [Redacted]
[Redacted]

ADMINISTRATIVE ASSISTANT 1