



working for an Idaho company in June 1995. They stated that [Redacted] never came to Idaho. She stayed in Texas where she was employed and where their daughters attended school.

The Bureau corresponded with the taxpayers stating that it appeared from the information available to the Bureau that at least Mr. [Redacted] was a resident of Idaho during part of 1995 and all of 1996. The Bureau asked the taxpayers to submit returns for the two years. The taxpayers responded with a letter and copies of some of their W-2 wage statements. The taxpayers stated that Mr. [Redacted] was not a resident of Idaho because his domicile was in Texas not Idaho. Mr. [Redacted] was only in Idaho to work; he did not relocate to Idaho.

The Bureau reviewed the information the taxpayers provided and found the taxpayers were indeed required to file Idaho income tax returns for 1995 and 1996. However, the Bureau found that the Idaho source income was less than what the Bureau originally thought was Idaho source income. The Bureau recalculated the taxpayers' Idaho income tax and found that for the tax year 1995 the taxpayers were entitled to a refund. Yet because the taxpayers did not file an Idaho income tax return within the statute of limitations for issuing refunds, Idaho Code section 63-3035, the Bureau cancelled the Notice of Deficiency Determination as it pertained to tax year 1995. For tax year 1996, the Bureau modified its determination to account for only the income from Idaho sources.

The Bureau sent the taxpayers notice of the modified determination and asked them if they agreed with the modifications or if they wanted to continue their appeal. The Bureau did not receive a response from the taxpayers. Consequently, the Bureau referred the matter for administrative review.

The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers did not respond. Therefore, the Tax Commission decided the matter based upon the available information.

The Tax Commission reviewed the information obtained by the Bureau and the information provided by the taxpayers. The Tax Commission found that the modified returns that the Bureau prepared accurately reflected the combined information of the taxpayers and the Bureau. The taxpayers have not provided any other information or documentation that shows the modified returns are incorrect. The taxpayers have not met their burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Therefore, the Tax Commission upholds the modified returns the Bureau prepared for the taxpayers.

The Bureau cancelled the Notice of Deficiency Determination for the taxable year 1995. The determination was cancelled because the modified return resulted in a refund to the taxpayers, which was beyond the statute of limitations for credit or issue. The Tax Commission agrees. Idaho Code section 63-3035 states, "No credit or refund shall be made to an employee who fails to file his return, as required under this chapter, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited."

The Bureau added interest and penalty to the taxpayers' 1996 Idaho tax. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated May 11, 2001, 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 taxpayers pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	\$ 97	\$ 24	\$ 39	\$ 160

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 \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2002, 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]

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ADMINISTRATIVE ASSISTANT 1