BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 15689
[Redacted],	)	
	)	DECISION
Petitioner(s).	)	
	)	

On May 9, 2001, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] proposing income tax, penalty and interest for the year 1996 in the total amount of $5,925.

On June 1, 2001, a timely protest and petition for redetermination was filed by [Redacted]. An informal hearing was not requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

This case is based on an Internal Revenue audit of another person. That person provided the Commission with a ruling from the District Court of the Second Judicial District of the state of Idaho, in and for the county of Idaho that found [Redacted] guilty of "Exploitation of a vulnerable adult." The Criminal Complaint in that case stated in pertinent part:

> Defendant did exploit a vulnerable adult, to-wit: defendant did misuse the funds, property or resources of . . . a vulnerable adult, for defendants profit or advantage, while in Idaho County, State of Idaho, in violation of the Idaho Code Section 18-1505; . . .

[Redacted] was a nonfiler for 1996. The Tax Discovery Bureau sent a letter with a questionnaire to [Redacted] on November 15, 2000, to help the Commission properly determine [Redacted] filing requirement. [Redacted] did not respond to this letter.

The Commission's Tax Enforcement Specialist (specialist) issued a NOD on May 9, 2001, to [Redacted] [Redacted]. [Redacted] called the specialist saying that this was the first she had heard of this.

On May 14, 2000, the specialist returned [Redacted] said she didn't know what to do. She already pays the [Redacted] per month. The specialist told her that the NOD was based on the court ruling that she used the income for herself. She said that was not the case, it was the other person's income. The specialist then explained her protest rights .

[Redacted]sent a protest letter dated June 1, 2001 which stated:

> "I have received notice of deficiency determination and I'm writing to file a petition for redetermination.
>
> May 9, 2001 was my first notice of owed taxes. I don't understand how I can owe penalty and interest since this is my first knowledge of the need to pay this tax.
>
> Would you please waive the penalty and interest since this this [sic] is the first notice I've received?
>
> I live on $460.00/month because of my disability, and I cannot afford to pay more than $20.00/month towards my taxes. Would that be acceptable? Will there be more interest added on after I start paying, which will make my attempts to pay this tax bill off impossible?
>
> Please consider removing interest and penalty, so that I can have a chance to pay this back."

Under the Internal Revenue Code, embezzled money is included in the embezzler's gross income if the funds are received without restriction on the use of the funds and without a consensual recognition, express or implied, of an obligation to repay the funds. See James v. U.S., 366 US 213 (1961).

Since [Redacted] used the vulnerable adult's income for her own purpose with no obligation to repay the funds, the embezzled money is illegal income to her and must be reported on her federal income tax return.

[Redacted] The above Idaho Code section would require [Redacted] to report the embezzled income to the state of Idaho.

In [Redacted]'s protest letter cited earlier in this decision, she requested that penalty and interest not be asserted. She also stated that she cannot afford to pay more than $20.00/month towards her taxes.

The Commission received by fax a Power of Attorney for [Redacted] on January 17, 2002, naming [Redacted] as her attorney-in-fact. [Redacted] asked the Tax Policy Specialist if the deficiency could be compromised for a lesser amount. A Financial Statement form was also received from [Redacted] completed Financial Statement form was reviewed by the Commission.

The requirement for [Redacted]'s to file an income tax return can be found in Idaho Code § 63-3030(a) which stated in pertinent part:

> Returns with respect to taxes measured by income in this act shall be made by the following:
>
> (1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code).
>
> (2) Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of two thousand five hundred dollars ($2,500), or any part-year resident individual having for the current taxable year a gross income from all sources while domiciled in or residing in Idaho, and from Idaho sources while not domiciled in and not residing in Idaho, which in total are in excess of two thousand five hundred dollars ($2,500); . .

Thus, as a matter of law, the Idaho Income Tax Act required that [Redacted] file an income tax return for the year in question.

To be timely filed, Idaho Code § 63-3032(a) states that the income tax return made on the basis of the calendar year shall be filed in the office of the Idaho State Tax Commission, on or before the 15th day of April following the close of the calendar year.

The statue imposing a penalty for failure to file can be found in Idaho Code § 63-3046(c) which states:

> 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.

The Commission has declined to waive the penalty imposed in this case.

The Idaho Supreme Court in hearing Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest, the Court said:

> The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

Since interest cannot be waived by the Commission, [Redacted] request that interest not be asserted can only be granted if the amount of tax owed is compromised. Administrative and Enforcement rule 500.01 states that the Commission may compromise the tax liability, penalties, or both, if one or more of the following circumstances exist: doubt as to liability, doubt as to collectibility; or extreme hardship of the taxpayer. The Commission has chosen not to compromise the NOD.

[Redacted] has not provided the Commission with a contrary result to the determination of her income [Redacted] Therefore, the Commission must uphold the deficiency.

WHEREFORE, the Notice of Deficiency Determination dated May 9, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that [Redacted] pay the following tax, penalty and interest.

YEAR	TAX	PENALTY	INTEREST	TOTAL
1996	$3,730	$933	$1,534	$6,197

Interest is computed through July 13, 2002

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] Receipt No. [Redacted] [REDACTED]

_____
ADMINISTRATIVE ASSISTANT 1