

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15829
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On June 15, 2001, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for taxable years 1990, 1992, 1993, and 1996 through 1999 in the total amount of \$13,018.

[Redacted] filed a timely protest and a telephone conference was held with [Redacted] and his representative, [Redacted], CPA, on March 14, 2002. In attendance at the conference were [Redacted], Commissioner; [Redacted], Tax Appeals Specialist; and [Redacted], Tax Enforcement Supervisor. The Tax Commission has reviewed the file and hereby issues its decision.

For the years 1990, 1992, 1993, 1996, and 1997, the taxpayers failed to file Idaho individual income tax returns even though Tax Commission records show they satisfied the filing requirements stated in Idaho Code § 63-3030[Redacted]

The taxpayers filed Idaho income tax returns for 1998 and 1999 claiming a filing status of married filing joint with two dependents. Each of the taxpayers signed the returns. By examining

criminal court records and the taxpayers' joint bank account, TDB identified additional income that had not been reported in the returns the taxpayers filed with the Tax Commission. The additional income was the result of [Redacted] embezzling money from her employer.

Idaho Code § 63-3045 (1)(a) states:

63-3045. 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.

TDB issued a deficiency notice, which [Redacted] appealed. The taxpayers' file was transferred to the Legal/Tax Policy Division of the Tax Commission for administrative review. An informal telephone conference was held and additional information was received.

Neither of the taxpayers challenged the amounts shown for the years 1990, 1992, 1993, 1996, and 1997. They have not claimed they did not have a filing requirement or that Idaho returns had already been filed for those years. In her protest letter, [Redacted] representative said that [Redacted]: "was responsible for all financial transactions in the family. [Redacted] trusted her with filing all tax returns and paying all taxes. [Redacted] believed that [Redacted] had filed and paid all taxes due."

In response to the TDB's determination that the taxpayers owed additional taxes for 1998 and 1999, the representative said [Redacted] was an innocent spouse because he did not know about the embezzlement and derived no benefit from the additional income. [Redacted] asked the Tax Commission to not hold him responsible for the Idaho income taxes resulting from the additional income obtained through his wife's illegal acts.

During the teleconference and subsequent correspondence, the taxpayer's representative asked the Tax Commission to consider how little [Redacted] gained from the additional income as demonstrated by the divorce settlement and the worth of the community assets before and after the thefts. [Redacted] stated that his wife handled all the money and paid all the bills. That fact was verified with the canceled checks. [Redacted] signed all but a few of the checks drawn on their joint checking account. Some of those checks appear to have been written by [Redacted] but signed by [Redacted].

Embezzled funds are income to the person who takes the money. In this case, [Redacted] was convicted of embezzling from her employer. Bank records obtained by the Tax Commission and court testimony by both taxpayers confirmed the money was deposited in the taxpayers' joint bank account along with their wages and other income. The family's living expenses and other purchases were paid out of the funds in that account. Many of the expenses were related to supporting the family's horses with purchases such as: an additional two acres of land, at least one horse trailer, at least one additional horse, fence panels, horse tack, and veterinary expenses.

In the taxpayers' divorce Memorandum and Order, (a copy of the Order was submitted to the Tax Commission for review by [Redacted] representative) it is stated that [Redacted] testified he understood that [Redacted] was receiving "bonuses" from her employer each month. [Redacted]

testified that, when money got short, [Redacted] would say, “ It’s about time for another bonus, [Redacted].”

However, whether or not [Redacted] knew there was unreported income or the source of the income is not relevant. Idaho is a community property state, which means, income received by either spouse is recognized as income received by them jointly as members of the “community.” The income derived from [Redacted] thefts was joint income. Additionally, while there is a federal statute that recognizes the role of an innocent spouse and provides innocent spouse relief, Idaho has no such provision.

[Redacted] and his representative questioned including the embezzled money in the taxpayers’ income because of the restitution the Court ordered [Redacted] to pay. Embezzled funds are income in the year they are received. In the present matter, the money was taken during three years. Therefore, the total additional income is divided over the three years according to when it was taken from [Redacted] employer. Restitution, which is part of the punishment for the crime, can be deducted as a miscellaneous deduction during the year the restitution or portion of the restitution is paid.

Upon reviewing the information in the file, the Tax Commission finds the taxpayers have not provided the Tax Commission with a contrary result to the deficiency notice. Therefore, the Tax Commission upholds the deficiency as asserted.

WHEREFORE, the Notice of Deficiency Determination dated June 15, 2001, is hereby 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>
1990	\$ 384	\$ 96	\$388	\$ 868
1992	245	61	188	494
1993	21	10	14	45
1996	25	10	10	45
1997	63	16	21	100
1998	2,695	1,348	683	4,726
1999	4,335	2,168	783	<u>7,286</u>
			TOTAL DUE	<u>\$13,564</u>

Interest is computed through August 15, 2002.

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

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2002, 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]
[Redacted]

Receipt No.[Redacted]

[Redacted]Receipt No.[Redacted] [Redacted]

[Redacted]

ADMINISTRATIVE ASSISTANT 1