



The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter giving him two options for redetermining the Notice of Deficiency Determination. The taxpayer did not respond. The Tax Commission sent the taxpayer a follow-up letter but the taxpayer still failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayer filed Idaho resident income tax returns for the tax years 1997, 1999 and 2000. The taxpayer also stated in the questionnaire returned with his protest that he was a resident of Idaho for the entire year of 1998 and that he lived in Idaho for the entire 12 months of the year. The taxpayer received wages from the [Redacted] in 1998. The wages the taxpayer received were in excess of the amount listed in Idaho Code section 63-3030 for filing Idaho income tax returns.

Knowing that the taxpayer's wages came from the [Redacted] and the taxpayer's filing history, the Bureau sent the taxpayer correspondence asking him to document his membership, if any, with the [Redacted]. IDAPA 35.01.01.033, Income Tax Administrative Rule provides that an enrolled member of a federally recognized Indian tribe who lives and works on a federally recognized Indian reservation is not taxed on the income derived within the reservation. However, the taxpayer did not provide the necessary information to substantiate that he was an enrolled member of the [Redacted].

The taxpayer failed to show that the return prepared by the Bureau was incorrect. The taxpayer also failed to provide anything that would show the income he earned was exempt or excluded from Idaho taxable income. The taxpayer did not meet his burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). However, the Tax Commission was able to obtain a copy of the taxpayer's 1998 W-2

wage statement. Therefore, the Tax Commission adjusted the return the Bureau prepared to include the taxpayer's withholdings.

With the addition of the taxpayer's withholdings, the taxpayer's 1998 return resulted in a refund. However, Idaho Code section 63-3072 prohibits crediting or issuing refunds if the return claiming the refund was not filed within three years of the due date of the return. The taxpayer's 1998 return had a due date of April 15, 1999. The three-year statute of limitations expired on April 15, 2002. Since the taxpayer has yet to file a return claiming the refund, his withholdings are not available for credit or refund.

WHEREFORE, the Notice of Deficiency Determination dated January 29, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

Since the taxpayer owes no additional tax and his refund is not available for credit or refund, an ORDER for payment or refund is not needed.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_ day of \_\_\_\_\_, 2002

IDAHO STATE TAX COMMISSION

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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]

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