

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16608
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On March 28, 2002, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable year 1996 in the amount of \$20,880.

The taxpayer filed a timely protest. She did not request a conference and did not submit additional information. The Tax Commission has reviewed the file and hereby issues its decision.

The taxpayer failed to file an Idaho individual income tax return for 1996 even though Tax Commission records show she satisfied the filing requirements stated in Idaho Code § 63-3030. She lived in Idaho working [Redacted] during the entire year of 1996. After receiving information the taxpayer was convicted of embezzling funds from various persons and airlines, TDB repeatedly asked the taxpayer to file an Idaho return and report the income and the Idaho income tax due. Although she made many promises, she did not submit the missing return.

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 the taxpayer appealed. The taxpayer's file was transferred to the Legal/Tax Policy Division of the Tax Commission for administrative review.

The taxpayer has not challenged the tax, penalty, or interest amounts determined by TDB to be her liability for 1996. She has not claimed she did not have a filing requirement or that her Idaho return had already been filed.

In her protest letter, the taxpayer said it would be an extreme hardship for her to pay the total amount for the following reasons:

1. My current wage is \$8.00 per hour.
2. I am currently paying \$193,000 in restitution to my victims, which has severely taken from my income.
3. The interest was accruing while I was incarcerated.
4. I will be forced to file bankruptcy, if required to pay the amount shown.

The taxpayer closed her letter with a request to take her restitution payments into account.

TDB answered the taxpayer's letter with a letter acknowledging the protest. It advised the taxpayer that another Bureau within the Tax Commission would address her request for special payment considerations. Further, TDB explained that restitution payments could be deducted from income during the year the payments are made. TDB asked the taxpayer to provide a list of the payment amounts and dates of payments. The requested information did not arrive, and the taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review.

The taxpayer admittedly did not file a 1996 Idaho income tax return. She signed sworn statements that she received income in the amount of \$193, 018.43 during the year. Because the

income was stolen from others, the taxpayer was ordered by a District Court Judge to repay the many victims of the theft. These restitution payments are part of the punishment for the crime.

Embezzled funds are income in the year they are received. Restitution can be deducted as a miscellaneous deduction during the year the restitution or portion of the restitution is paid. The total 1996 embezzlement is taxable by Idaho.

Absent an original Idaho income tax return, TDB prepared a return on the taxpayer's behalf wherein the taxpayer's income resulting from the embezzlement was reported. Idaho tax was computed allowing the taxpayer the appropriate number of exemptions, deductions, and credits. Penalty and interest as provided in Idaho Code was correctly applied.

WHEREFORE, the Notice of Deficiency Determination dated March 28, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for 1996:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$12,611	\$3,153	\$5,529	\$21,293

Interest is computed through December 1, 2002.

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

An explanation of taxpayer's 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]

\_\_\_\_\_