

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 16255
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On November 7, 2001, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for taxable years 1996 and 1997 in the total amount of \$10,316.

The taxpayers filed a timely protest. They did not request a hearing but did submit additional information. Therefore, the Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

During the years in question, 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].

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.

Because the taxpayers did not file state income tax returns, the Bureau prepared provisional returns and issued a deficiency notice. The tax was computed using records retained by the Tax Commission [Redacted]. The taxpayers' representative responded to the notice by sending a letter of protest and executed Power of Attorney form. After allowing time for the representative to secure the returns from their accountant, who is presently living in Oregon, the taxpayers' file was transferred to the Legal/Tax Policy Division of the Tax Commission for administrative review.

In the protest letter, the taxpayers' representative listed the following "Specific Items in Notice Protested:"

1. Idaho adjusted gross income for each year.
2. Amount allowed for standard deduction/itemized deductions for each year.
3. Failure to allow operating expenses and other available deductions with respect to taxpayers' businesses ([Redacted], Idaho and other business interests), with respect to which revenues and expenses were about equal in 1996 and 1997. The amount of such items for 1996 and 1997 are still being determined.
4. Related imposition of penalties and interest for each year.

Efforts to securing the missing returns have been fruitless. Several letters have been sent and more than nine telephone calls have been placed, yet neither return has been submitted.

The taxpayers do not deny they were residents of Idaho who met Idaho income tax filing requirements. [Redacted] was employed by [Redacted]. Withholding that could be identified was allowed to offset a portion of each year's tax. [Redacted] owned and operated his own businesses.

The taxpayers' representative indicated the taxpayers had deductions and expenses that had not been considered in the Bureau's computations. However, deductions from gross income are a matter of legislative grace and taxpayers must be able to show they fall within the terms of the deduction. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 54 S.Ct. 788, (1934). The Taxpayers

have provided no information to show that there were any allowable deductions from gross income.

It is well settled in Idaho that provisional returns prepared by the Idaho State Tax Commission are presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on a taxpayer to show that the tax deficiency is erroneous. Therefore, based on the information available, the Tax Commission finds the provisional returns to be fair representations of the taxpayers' taxable income for the years in question.

WHEREFORE, the Notice of Deficiency Determination dated November 7, 2001 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>
1966	\$ 298	\$ 75	\$ 133	\$ 506
1997	6,378	1,595	2,289	<u>10,262</u>
			TOTAL DUE	<u>\$10,768</u>

Interest is computed through January 15, 2003.

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 \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2003, 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]

---