

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 16549
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On March 13, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1997 through 1999 in the total amount of \$526,091.

On April 27, 2002, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information [Redacted] The Bureau reviewed the changes and determined the changes were applicable to the taxpayers' Idaho income tax returns. The Bureau adjusted the taxpayers' returns and sent the taxpayers a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that among other things they gave their consent to rescind the Notice of Deficiency Determination [Redacted]. The taxpayers also stated they demanded a request for abatement [Redacted] and that all taxing agencies lack jurisdiction until the Secretary of Treasury makes a final determination. The taxpayers stated they have not received a final decision from the Secretary of Treasury.

[Redacted].

The Bureau acknowledged the taxpayers' protest and forwarded the matter for administrative review. The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers chose to provide additional documentation [Redacted]

The taxpayers provided the additional documentation and the Tax Commission made further inquiry [Redacted]. The taxpayers stated the documents they provided show that the Secretary of Treasury has specifically abated the alleged deficiency pursuant to Title 26 USC Section 6213(b)(2)(A), and therefore, the claim of the Idaho State Tax Commission is based on erroneous information.

The taxpayers' documentation is a form letter addressed to the Secretary of Treasury [Redacted]. The form letter is titled Consent to Rescind Notice of Deficiency Alternate Claim for Abatement. In the letter the taxpayers gave their consent to the Secretary to rescind the Notice of Deficiency Determination addressed to [Redacted] dated June 18, 2001 for the tax years 1997 and 1998. The taxpayers gave their consent as provided for in Internal Revenue Code (IRC) section 6212(d). In addition, the taxpayers demanded per IRC section 6213(b)(2)(A) that the Secretary abate the same Notice of Deficiency Determination. The taxpayers apparently believe that by doing this they have effectively quashed any action [Redacted].

IRC section 6212(d) gives the Secretary the ability to rescind a notice of deficiency with the consent of the taxpayer. This is an action initiated by the Secretary, not by the taxpayer. The fact that the taxpayers in this case have given their consent to the Secretary to rescind the notice of deficiency does not mean that the Secretary is required to do so. The record contains no evidence that the Secretary wanted to rescind the notice of deficiency or requested the consent of the taxpayers.

The taxpayers demanded abatement of the Secretary's assessment as provided for in IRC section 6213(b)(2)(A). However, this section of the IRC deals specifically with assessment notices arising from mathematical or clerical errors on taxpayers' returns. The subsection quoted by the taxpayers refers to paragraph (1) in section 6213(b). That paragraph states that assessments made because of mathematical or clerical errors cannot be petitioned to the Tax Court. However, paragraph (2)(A) states that a taxpayer can ask the Secretary to abate the assessment for mathematical or clerical errors and the Secretary shall abate the assessment. After the abatement, any reassessment subsequent to the abatement must then follow the deficiency procedures.

The taxpayers did make the request for abatement. However, the taxpayers did not receive an assessment notice for mathematical or clerical errors. [Redacted] In addition to the aforementioned, the Tax Commission obtained updated information [Redacted]. That information showed the same adjustments as what the Bureau made to the taxpayers' Idaho income tax returns [Redacted] [Redacted] Since the taxpayers' net operating loss was fully absorbed or eliminated in an earlier year, there is no net operating loss carryover to 1999. Therefore, the Tax Commission upholds the Bureau's adjustment to the taxpayers' 1999 Idaho income tax return.

WHEREFORE, the Notice of Deficiency Determination dated March 13, 2002, 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>
1997	\$113,445	\$28,361	\$41,668	\$183,474
1998	266,892	13,345	77,425	357,662
1999	3,797	949	896	<u>5,642</u>

TOTAL DUE      \$546,778

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

An explanation of the taxpayers' rights 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]