

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16749
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On July 2, 2002, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted](petitioners), proposing income tax, penalty and interest for the years 1995, 1996, 1997, 1998, and 1999 in the total amount of \$10,833.

On August 5, 2002, a timely protest and petition for redetermination was filed by the petitioners' representative (representative). An informal hearing was not requested by the petitioners or their representative. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

This is a nonfiler case. The petitioners have never filed individual income tax returns with the state of Idaho. The petitioners have had Idaho driver's licenses since 1990. The petitioners also have had an active sales tax permit since 1997. According to information from the [Redacted] [Redacted] The petitioners called in response to the nonfiler letter and said the information was with their bookkeeper and the returns would be sent when completed. No returns were filed so an NOD was issued for tax years 1995 through 1999 based on W-2 and 1099 information [Redacted] along with additional information for the years 1997 and 1998 from the petitioners' sales tax returns.

In the petitioners' letter of protest dated August 5, 2002, the representative stated in pertinent part:

I am in disagreement with this determination. I am presently in the process of gathering the necessary information, primarily W-2 forms, in order to properly prepare the returns claiming the state withholding on the W-2's. In addition, the Thompson's are entitled to claim additional exemptions for the years in question. The amount of tax due, penalties and interest will be reduced substantially from the deficiency attached.

I presently have most of the information for 1995 and 1997 through 1999 and the [Redacted] are presently looking for the 1996 information. I have a large discrepancy in the income for 1998 based upon my information and the information you obtained from the IRS. If necessary, I hope that you will be able to supply additional detail to help me resolve that matter. . . .

On August 8, 2002, TDB acknowledged the petitioners' protest and asked that the 1995 through 1999 returns be filed. TDB called the representative to check on the returns, and the representative said he had a discrepancy on the 1998 income. TDB explained the difference was the amount reported as gross sales. The representative indicated the returns would be sent when completed. TDB did not receive any of the returns. A follow-up letter was sent on September 23, 2002. The representative did not respond to this letter, so the file was transferred to the Legal/Tax Policy Division for further review.

The Tax Policy Specialist requested and received the petitioners' 1996 W-2 Wage and Tax Statements from their employers. The petitioners' W-2s for 1996 were sent to the representative so that he could complete their return for that year.

The representative sent in the petitioners' Idaho and U.S. individual income tax returns for 1995 and 1996. The information contained in these returns will be used to adjust the provisional returns prepared by the Tax Enforcement Specialist.

The representative told the policy specialist that he was preparing a Schedule C for 1997 and 1998 to show the expenses associated with the petitioners' business. At this time, the representative has not provided this information so no change will be made to the petitioners' provisional returns for 1997 and 1998 prepared by TDB.

The representative also told the policy specialist that he had a 1999 W-2 obtained from the petitioners for [Redacted] that was not included in TDB's provisional return. The W-2 had an incorrect social security number. The income and state income tax withheld shown on this W-2 will be included with the provisional return for that year.

On October 29 2003, the representative provided the petitioners' 1999 Idaho income tax return to the Commission. The petitioners' return for 1999 resulted in a refund. Idaho Code sections 63-3072(c) prohibits refunding or crediting the overpayment of tax if a claim for credit or refund is not filed within three (3) year of the due date of the return. The petitioners' 1999 return had a due date of April 15, 2000. Since the petitioners' submission of their 1999 return was well past the three-year statute, the Tax Commission would normally deny this refund. However, since the NOD in this case was issued prior to the expiration of the three year statute of limitation for tax year 1999, the period of limitations is suspended. Idaho Code section 63-3072(i) states:

The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

Therefore, the petitioners' refund for tax year 1999 will be used to offset any liability due for other years included in this decision.

[Redacted] The petitioners have only provided the Commission with returns for 1995, 1996 and 1999. No information has been provided for the petitioners' business expenses for 1997 and 1998 and their Idaho income tax withholding for 1997. Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated July 2, 2002, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$ 852	\$213	\$501	\$1,566
1996	692	173	347	1,212
1997	1,253	313	522	2,088
1998	1,610	403	546	2,559
1999	(286)	-0-	(76)	<u>(362)</u>
TOTAL DUE				<u>\$7,063</u>

Interest is computed through February 27, 2004.

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

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

DATED this ___ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, 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]
[Redacted]

[Redacted]
