

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NOs. 16838 and 17187
[REDACTED] Petitioners.)	
)	DECISION
)	
)	
)	

On June 28, 2002, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), asserting additional income taxes, penalty and interest in the amount of \$25,560 for the 1996 through 2000 taxable years. The taxpayer filed a timely appeal and petition for redetermination. An informal hearing was scheduled for May 13, 2003, at the Tax Commission’s offices in Boise. The taxpayer did not show up for the scheduled hearing. A day or two later the taxpayer called to request that the informal hearing be rescheduled to May 20, 2003. The Tax Commission granted the request to reschedule the hearing, but the taxpayer again failed to show up for the hearing. As a result, the Tax Commission will decide this matter based on the record as it stands.

This is a nonfiler case. [Redacted] has not filed Idaho individual income tax returns for at least the 1996 through 2000 taxable years. Information obtained by the Tax Discovery Bureau indicates that Mr. [Redacted], who currently lives in Boise, Idaho, was a resident of the State of Idaho during the entire 1996 through 2000 taxable years. In addition, [Redacted], the Tax Discovery Bureau was able to determine that Mr. [Redacted] received gross income of \$37,201 in 1996, \$32,444 in 1997, \$56,747 in 1998, \$77,047 in 1999, and \$54,240 in 2000. A Notice of Deficiency Determination was then issued to Mr. [Redacted] setting out the additional Idaho income tax, 25% late-payment penalty, and interest owed on the income figures listed above.

In the letter of protest filed on behalf of the taxpayer, the representative for Mr. [Redacted] asserted that [Redacted] “is in dispute with the IRS for taxes allegedly owing for the

years 1996 – 2000.” With respect to the 1996 through 1998 taxable years, the representative supported this assertion by providing a copy of a “Collection Due Process Hearing” letter from the IRS. That IRS form letter, which was dated August 15, 2002, specified that “[y]our Form 12153, Request for a Collection Due Process Hearing dated June 26, 2002, has been received and is being processed. . . . Your request has been forwarded to your local Appeals Office for consideration. . . . You will be contacted by the Appeals Office regarding the time, date, and place of your scheduled hearing.” The letter states on its face that it applies to the 1996, 1997, and 1998 tax years. The record before the Tax Commission does not reveal whether the hearing alluded to in the August 15, 2002, IRS letter has been held or what the outcome of that hearing was.

After establishing that Mr. [Redacted] was engaged in a “Collection Due Process” dispute [Redacted] with respect to the 1996 through 1998 taxable years, Mr. [Redacted] representative went on to argue as follows: “In that state tax liability arises [Redacted], state taxes owing cannot be determined until [Redacted] is determined.” The representative then requested that the Tax Commission hold this matter in abeyance “pending the outcome of the administrative hearings [Redacted].” For the reasons set out below, the Tax Commission declines the request to hold this matter in abeyance pending the outcome of the “Collection Due Process Hearing.”

The information relied on by the Tax Discovery Bureau in computing [Redacted] Idaho income tax liability for the 1996 through 1998 tax years were copies of [Redacted] reports issued to Mr. [Redacted] for those three taxable years. If those audit reports were in fact under appeal to either the [REDACTED] or to the United States Tax Court, they would in all likelihood not be relied upon as the basis for the Idaho income tax deficiency. That is because [REDACTED]

audit findings are not considered to be a “final [Redacted] determination” when they are on appeal and subject to modification. As set forth in Idaho Code § 63-3068(f), “the term ‘final [Redacted] determination’ shall mean the final resolution of all issues which were adjusted by the [Redacted].” Thus, until there is a final resolution of the issues addressed and adjusted in the [Redacted] audit, the Tax Commission will normally not rely on that audit in making a final resolution of any Idaho income tax liability that would otherwise flow from the [Redacted] audit adjustments.

In the present case, there is no indication that the [Redacted] audit findings relied on by the Tax Discovery Bureau are under appeal or are in any way unresolved. The [Redacted] audit reports were issued in November, 2000; and Mr. [Redacted] has not provided any documents or other evidence to indicate that the audit reports were appealed to the [REDACTED] or to the U.S. Tax Court. Thus, from the record currently before the Tax Commission, it appears that those [Redacted] audit reports are final and can be relied upon by the Commission to determine whether Mr. [Redacted] has an Idaho income tax deficiency.

It is true that Mr. [Redacted] did file a petition with [Redacted] seeking a “Collection Due Process Hearing.” However, a request for a Collection Due Process (CDP) hearing is not equivalent to an appeal of an [REDACTED] deficiency notice to the U.S. Tax Court. Rather, the CDP hearing is an administrative remedy that is available to contest the filing of a [Redacted] tax lien or the notification of intent to levy upon property. See [Redacted] In general, a taxpayer is not permitted to contest the underlying [Redacted] tax assessment at the CDP hearing. See Tres. Reg. § 301.6326-1(a) (“Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying deficiency that led to the imposition of a lien.”). As a result, the filing of a CDP petition does not reopen the review of the

underlying [Redacted]audit adjustments. It simply provides an administrative forum to contest the filing of a [Redacted]income tax lien or the notification of intent to levy on property.

Because the CDP petition filed by Mr. [Redacted] does not reopen the underlying [Redacted]audit adjustments set out in the audit reports issued for the 1996 through 1998 taxable years, those [Redacted]adjustments are “final.” The fact that Mr. [Redacted] is challenging the filing of [Redacted] tax liens or other collection action being taken against him by [Redacted] does not make the underlying [Redacted] audit open for further review or modification. As a result, those audit adjustments can be relied upon by the Idaho State Tax Commission in determining whether Mr. [Redacted] also has an Idaho income tax deficiency.

With respect to the 1999 and 2000 taxable years, the Commission’s audit staff did not rely upon a [Redacted] audit report to establish that Mr. [Redacted] had an Idaho income tax deficiency. Rather, the audit staff relied on [Redacted]form W-2 and 1099 information that had been provided to the Commission through its [Redacted]. Although not clearly articulated in the letter of protest filed on behalf of Mr. [Redacted], it appear that [Redacted] is arguing that the Idaho State Tax Commission has no authority to assert an Idaho income tax deficiency or to assess additional Idaho income taxes until his [Redacted]income tax liability has been conclusively determined. This argument is incorrect. Idaho Code § 63-3045(1)(a) specifically provides that “[i]f . . . the state tax commission determines that there is a deficiency in respect to 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” Nothing in that statute requires the Tax Commission to wait until the [Redacted]has assessed a tax against the taxpayer.

While the Idaho income tax laws incorporate many of the provisions of the [Redacted] income tax laws, and utilize [Redacted] “taxable income” as the starting point for computing a taxpayer’s Idaho taxable income, see Idaho Code § 63-3002, it does not follow that the [Redacted] must affirmatively act before the Idaho State Tax Commission is authorized to issue a notice of deficiency. Stated another way, the Idaho State Tax Commission is statutorily authorized to determine whether a taxpayer has an Idaho income tax filing requirement or whether that individual owes an Idaho income tax deficiency regardless of any action taken by [Redacted]. See, e.g., Holt v. New Mexico Dept. of Taxation and Rev., 59 P.3d 491 (N.M.2002) (New Mexico Department of Taxation had the authority to determine a taxpayer’s New Mexico income tax liability without regard to what the taxpayer actually reported on his [Redacted] income tax return and without regard to whether [Redacted] has audited or adjusted that [Redacted] income tax return.). Stubbs’ claim to the contrary is not supported by any logical argument or legal authority and ignores the plain language of Idaho Code § 63-3045(1)(a).

Based on the evidence contained in the file, it is clear beyond any reasonable dispute that during 1996 through 2000 Mr. [Redacted] was an Idaho resident and that he earned income in the amounts set forth in the June 28, 2002 Notice of Deficiency Determination. Having failed to file Idaho income tax returns for the 1996 through 2000 taxable years, the Tax Commission was well within its statutory power to issue the Notice of Deficiency Determination that is the subject matter of this dispute. Furthermore, it is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is 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 the taxpayer to show that the tax deficiency is incorrect or otherwise erroneous. Mr. [Redacted] has not presented any convincing

factual or legal basis to support his protest of the June 28, 2002, Notice of Deficiency Determination or to establish that the tax deficiency set out in that Notice is incorrect or otherwise erroneous. As a result, his protest is denied.

WHEREFORE, the Notice of Deficiency Determination dated June 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	2,309	\$ 577	\$1,084	\$ 3,970
1997	1,903	476	725	3,104
1998	3,883	971	1,184	6,038
1999	5,540	1,385	1,284	8,209
2000	3,584	896	544	<u>5,024</u>
			TOTAL	<u>\$26,345</u>

Interest is calculated through June 30, 2003, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

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

An explanation of the taxpayer's 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]
