

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17409
[Redacted],)	
)	DECISION
Petitioner)	
_____)	

On April 10, 2003, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable years 1999 through 2001 in the total amount of \$7,849.

The taxpayer filed a timely protest and subsequently submitted Idaho returns for 1998 and 1999. He did not request a hearing. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

The taxpayer was an Idaho resident during all three years at issue. [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.

The Bureau issued a deficiency notice that was returned by the post office stamped, “UNCLAIMED.” The Bureau sent a copy of the notice out by regular delivery to which the taxpayer responded by sending a letter of appeal and copies of W-2 forms and pay stubs from two different employers. He said he would like the opportunity to file the correct forms and would need time because he did not have W-2s for 2000. He said he would contact his previous employer to obtain copies of those forms. He offered, “I am going to claim for the years in question for myself & my daughter.”

In a letter dated June 11, 2003, the Bureau acknowledged the taxpayer’s protest and asked him to submit the returns by July 11, 2003. When no response was received, two additional letters were sent. Again, no response was received, and the taxpayer’s file was transferred to the Legal/Tax Policy Division for administrative review.

The Tax Commission’s Revenue Operations Division received the taxpayer’s 1998 and 1999 Idaho income tax returns [Redacted] on the same day the file was transferred. Revenue Operations forwarded the returns to the Legal/Tax Policy Division to be reviewed along with the taxpayer’s protest file. A letter advising the taxpayer of his appeal rights was sent, but the taxpayer did not contact the Tax Commission after he sent the two tax returns.

The Tax Commission has reviewed the 1998 and 1999 income tax returns the taxpayer submitted and found the returns contained errors. Both returns were prepared as head of household with the taxpayer’s son (not daughter as he stated in his protest letter) listed as his dependent. In the accompanying federal schedule for the earned income credit, the taxpayer’s son was shown as living with the taxpayer “0 months” during both 1998 and 1999.

The Internal Revenue Code (IRC) allows an unmarried person maintaining a household for a “qualified person” to qualify for the “head of household” tax rates to determine his or her tax. Those who qualify as head of household get lower tax rates and a higher standard deduction than those who qualify for “single.” For the taxpayer to qualify for head of household status for any year, the taxpayer must have maintained as his or her home a household which for more than one-half of the tax year was the principal place of abode of a qualifying individual (generally, children and certain other dependents).

In the taxpayer’s federal returns, he named his son as the person qualifying him as head of household; yet the schedule for the earned income credit showed the child did not live with him at all during either 1998 or 1999. Nothing else in the file suggests the taxpayer maintained a home for his son for more than one-half of the tax year as the child’s principal place of abode.

The taxpayer shows his son as his dependent in both his state [Redacted] for 1998 and 1999. [Redacted] In general, IRC § 151(c) allows a taxpayer an exemption amount for each “dependent” as defined in § 152. Section 152(a) defines a dependent to include a son or daughter of the taxpayer, “over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer).”

When a child’s parents are divorced, IRC § 152(e)(1) provides a special rule to determine which one of them is entitled to the dependency exemption. Treasury Regulation § 1.152(b) provides that, when the parents have “split” custody, the dependency exemption “will be deemed to be with the parent who, as between both parents, has physical custody of the child for the greater portion of the calendar year.”

An exception to these rules is provided in IRC § 152(e)(2), which allows the dependency exemption to the non-custodial parent when the custodial parent agrees to release the exemption. In that case, the non-custodial parent must obtain from the custodial parent a written declaration that he or she “will not claim such child as a dependent for any taxable year beginning in such calendar year” and attach the written declaration to his or her return. IRC § 152(e)(2).

The taxpayer reports in his federal return that his son did not live with him. He was not the custodial parent during 1999. He did not attach a written declaration stating his son’s mother would not claim him as a dependent for the year. In addition, the taxpayer has provided nothing to suggest he provided over half of his son’s support that year that would result in his son being a “qualifying” child under IRC § 151. The taxpayer is not entitled to claim a tax credit or a deduction for his son as a dependent.

The Bureau used the income shown [Redacted] to calculate the taxpayer’s 1999, 2000, and 2001 Idaho income tax responsibility then allowed the standard deduction, one personal exemption, and a grocery credit for each year. [Redacted] records and the taxpayer’s self-prepared return and W-2s supported the income amount used by the Bureau to determine the taxpayer’s 1999 Idaho income tax. The taxpayer has furnished nothing to dissuade the Tax Commission from accepting the taxpayer’s [Redacted] records as an accurate reflection of the taxpayer’s income for 2000 and 2001.

No withholding was identified in Tax Commission records. The withholding the taxpayer claimed in his 1999 return was substantiated by the W-2s he furnished. This information allows the Tax Commission to reduce the tax amount for 1999 by that withholding. The taxpayer did not provide copies of his 2000 or 2001 W-2s.

The Tax Commission contacted the taxpayer's 2000 and 2001 employer located in [Redacted], Washington (the contact information was shown in the pay stubs furnished by the taxpayer) and was able to obtain the taxpayer's Idaho withholding amounts for both years.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). Having presented no information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Tax Commission accepts the Bureau's determination of tax due offset by the withholding credits that have been identified since the NODD was issued.

WHEREFORE, the Notice of Deficiency Determination dated April 10, 2003, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$387	\$97	\$115	\$599
2000	<515>	-0-	-0-	<515>
2001	<165>	-0-	-0-	<165>
			TOTAL	<<\$81>

Interest is computed through September 1, 2004.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]
[Redacted]

[Redacted]
