

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 17622
[REDACTED]	)	
Petitioner.	)	DECISION
	)	
	)	

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On August 1, 2003, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioner), proposing income tax, penalty and interest for the years 1998, 1999, and 2001 in the total amount of \$2,126.

On October 2, 2003, a timely protest and petition for redetermination was filed by the petitioner. An informal hearing was not requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

The petitioner has not filed Idaho income tax returns for the years 1998, 1999, and 2001. On May 30, 2003, the Tax Discovery Bureau sent a letter with a questionnaire to the petitioner to help the Commission properly determine the petitioner's filing requirement. The petitioner did not respond to this letter, so [Redacted]. The Commission then issued a NOD to the petitioner [Redacted].

On October 2, 2003, the petitioner sent a letter to TDB in which he disagreed with the figures stated in the NOD and requested time to file the returns.

On October 6, 2003, TDB sent the petitioner a letter notifying him that his protest was a timely petition of the NOD. TDB also requested that the petitioner provide any information with regard to the issues raised for review by November 15, 2003. The petitioner did not respond, so his file was transferred to the Commission's Legal/Tax Policy Division for further review.

On January 20, 2004, the Tax Policy Specialist (policy specialist) sent the petitioner a letter to inform him of his alternatives for redetermining a protested NOD. A follow-up letter was sent on February 23, 2004. The petitioner did not respond to either letter.

The policy specialist reviewed the W-2 Wage and Tax Statements filed with the Commission by the petitioner's [Redacted] employer. The petitioner's W-2s for 1999 and 2001 were found in the Commission's records, and the deficiencies for those years have been modified accordingly. All 1998 W-2s in the Commission records have been destroyed.

It is well settled in Idaho that a NOD 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 Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id. Since the petitioner has failed to meet the burden in this case, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination, as modified, is true and correct.

A recalculation of the petitioner's returns for 1999 and 2001 resulted in refunds. However, Idaho Code section 63-3072(c) prohibits refunding or crediting the overpayment of tax, and Idaho Code section 63-3024A(g) does not allow a refund claim allowed in that section if the claim for credit or refund is not filed within three years of the due date of the return. The petitioner's 1999 return had a due date of April 15, 2000. Since the petitioner did not submit a 1999 return within the three-year statute, no credit or refund will be issued for that year.

[Redacted] The petitioner has not provided the Commission with a contrary result to the determination of his income [Redacted] Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated August 1, 2003, 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>
1998	\$112	\$28	\$41	\$181
1999	0	0	0	0
2001	(144)	0	(17)	<u>(161)</u>
			TOTAL DUE	<u>\$20</u>

Interest is computed through May 16, 2004.

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

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

DATED this \_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

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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]

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