

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18000
[Redacted])	
Petitioner.)	DECISION
)	
)	

On March 24, 2004, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Petitioner), asserting income tax, penalty, and interest in the amount of \$39,225 for the 1999, 2000, and 2001 taxable years. The notice advised the Petitioner that, if she disagreed with the deficiency determined by the Bureau, she could petition the Tax Commission for a redetermination.

The Petitioner timely filed a letter of protest titled “Notice of Return of Erroneous Presentments” that the Commission treated as a petition for redetermination. In letters dated May 6, 2004, and June 29, 2004, the Commission notified the Petitioner that she could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the Bureau or, in the alternative, submit additional information to show why the deficiency should be redetermined. The Petitioner did not respond to these letters and did not submit any additional information.

This decision is based on the information contained in the Commission’s file. The Commission has reviewed the file, is advised of its contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau with interest updated through October 31, 2004.

This is a nonfiler case. The Petitioner lives in Idaho and did not file Idaho individual income tax returns for the 1999 through 2001 taxable years. Information received [Redacted] shows the

Petitioner and her husband received Form 1099-MISC income of approximately \$314,022 during the 1999 taxable year, \$326,698 during the 2000 taxable year, and \$56,357 during the 2001 taxable year. Petitioner's share of this income is \$157,011 for 1999, \$163,349 for 2000 and \$28,179 for 2001.¹

The Tax Discovery Bureau prepared provisional returns for the Petitioner. To determine the Petitioner's gross income, the Bureau relied upon [Redacted] The Bureau provided the Petitioner with personal deductions and exemptions and grocery credits. Once completed, the provisional returns showed a tax deficiency existed for each of the years at issue. The Bureau then issued a Notice of Deficiency Determination which included a description of the information relied upon, a copy of the provisional returns, a document showing the calculation of interest, and an explanation of the Petitioner's right to request a redetermination of the deficiency.

The Petitioner responded to the Notice of Deficiency Determination by sending a form letter stating that the Commission does not have a license to make legal determinations for her under the Uniform Commercial Code (UCC).

The taxpayer's implied assertion that the Uniform Commercial Code governs state tax agencies is misplaced. Idaho law and not the Uniform Commercial Code governs matters concerning Idaho's individual income tax. The United States Supreme Court has long recognized that the right to tax is a crucial attribute of state sovereignty. *M'Culloch v. Maryland*, 17 U.S. 316, 428 (1819). "The power to tax rests solely with the legislature, and is subject only to constitutional limitations." *Richey v. Indiana Dept. of State Revenue*, 634 N.E.2d 1375, 1376 (Ind. Tax Ct. 1994). The Idaho legislature authorized the Commission to issue a Notice of Deficiency Determination to

1. The total amount of the 1099-MISC income is community property. Thus, Petitioner's share of the gross income is one half of the total amount shown on the Form 1099-MISC.

taxpayers who have not met their Idaho individual income tax filing and payment obligations. Idaho Code § 63-3045.

Furthermore, Idaho Code section 28-1-102 sets out the purpose of the Uniform Commercial Code. It states in pertinent part:

28-1-102. Purposes -- Rules of construction -- Variation by Agreement. -- (1) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(Emphasis added.)

The Uniform Commercial Code applies only to commercial transactions; it has no bearing on a determination of tax matters. Therefore, the Tax Commission finds the UCC argument inapplicable to the matter at hand.

The threshold amount for a married individual filing separately from her spouse was \$2,750 for the 1999 taxable year, \$2,800 for the 2000 taxable year, and \$2,900 for the 2001 taxable year. The Petitioner's gross income was at least \$157,011, \$163,349 and \$28,179, for 1999 through 2001 respectively, which is well in excess of the statutory threshold income amounts that trigger a married person's obligation to file separate Idaho returns from her spouse.

Persons who are required to file an Idaho individual income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. In the event a person fails to file a tax return or to pay the proper amount of individual income tax, Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency Determination.

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

It is well settled in Idaho that provisional returns determined by the Idaho State Tax Commission are 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 Petitioner to show that the tax deficiency is erroneous. *Id.* The Petitioner has failed to show that the provisional returns prepared by the Tax Commission were incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the Petitioner's taxable income for the taxable years in question and that the amounts shown due on the Notice of Deficiency Determination are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated March 24, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following taxes, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$ 12,313	\$3,078	\$3,775	\$19,166
2000	12,671	3,178	2,876	18,725
2001	1,399	350	210	<u>1,659</u>
			TOTAL DUE	<u>\$39,550</u>

Interest is calculated through October 31, 2004, and will continue to accrue until paid.

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

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]

Receipt