

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 18097C  
 )  
 ) DECISION  
Petitioner. )  
\_\_\_\_\_ )

On April 12, 2004, 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 year 2002 in the total amount of \$6,753.

On June 4, 2004, a timely protest and petition for redetermination was filed by the petitioner. An informal hearing has not been requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

The petitioner did not file Idaho income tax returns for the years 2000, 2001 and 2002. On October 14, 2003, TDB sent a letter with a questionnaire to the petitioner and his wife to help the Commission properly determine their filing requirement. The petitioner and his wife did not respond to the letter, so [Redacted]his wife[Redacted]. The information [Redacted] showed that the petitioner and his wife had not declared a filing status for tax year 2002. The Commission then issued a NOD for the year 2002 to the petitioner [Redacted].

The petitioner (Mr. [Redacted]) called the Commission's Tax Enforcement Specialist (specialist) on April 14, 2004 stating he would not file his income tax returns for the following reasons:

1. His family's trust would not provide the necessary information to make accurate returns and
2. Since he was a Certified Public Accountant in [Redacted], he did not want to risk filing returns based on estimated figures.

The specialist's supervisor spoke to Mr. [Redacted] and he still refused to file.

On April 14, 2004, the specialist sent Mr. [Redacted] the documents he requested during their telephone conversation earlier that day.

On June 4, 2004, TDB received the petitioner's letter of protest, which stated:

. . . per your request we disagree to your audit for the tax years of 2000, 2001, and 2002. . . .

1. You have not taken into account any basis that I can see.
2. Until the Law Suite in [Redacted] is completed we will not use their incorrect k-1's and basis and as such we will not file a fraud tax return per the state rules and my CPA rules. . . .

On June 7, 2004, TDB called Mr. [Redacted] who stated he was going to court in [Redacted] on June 17, 2004, in regards to the basis of stock sold in the years 2000 through 2002. The specialist told Mr. [Redacted] that his file would be sent to the Commission's Legal/Tax Policy Division for further review.

On July 8, 2004, the Tax Policy Specialist (policy specialist) sent the petitioner and his wife a letter to inform them of the alternatives for redetermining a protested NOD.

On July 26, 2004, the policy specialist spoke on the phone with Mr. [Redacted]. Mr. [Redacted] claimed that the K-1s issued to him by his father's and grandfather's trusts were

incorrect. Mr. [Redacted] requested that the Idaho State Tax Commission write a letter to the bank requesting these K-1s be corrected. On July 29, 2004, the policy specialist sent the petitioner and his wife a letter to inform them that the Commission could not comply with Mr. [Redacted]'s request.

The policy specialist's letter requested that the petitioner and his wife provide their Idaho individual income tax returns with a copy of their federal return and schedules for tax years 2000, 2001, and 2002. The policy specialist gave the petitioner and his wife another 30 days to provide the returns or the Commission would issue a decision based on the information currently in the file. The petitioner did not respond.

The requirement for the petitioner to file income tax returns can be found in Idaho Code § 63-3030 which stated in pertinent part:

**Persons required to make returns of income.** -- (a) Returns with respect to taxes measured by income in this chapter shall be made by the following:

(1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code.

The Internal Revenue Code section 6012 states in pertinent part:

**§ 6012 Persons required to make returns of income.**

**(a) General rule.**

Returns with respect to income taxes under subtitle A shall be made by the following:

(1) (A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual— . . .

(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Thus, as a matter of law, the Idaho Income Tax Act required that the petitioner file an income tax return for the year in question.

To be timely filed, Idaho Code § 63-3032(a) states that the income tax return made on the basis of the calendar year shall be filed in the office of the Idaho State Tax Commission on or before the 15th day of April following the close of the calendar year.

The statute imposing a penalty for failure to file can be found in Idaho Code § 63-3046(c) which states:

In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

The Commission has declined to waive the penalty imposed in this case.

In Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), the Idaho Supreme Court addressed whether the taxpayer was required to pay interest. The Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

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 is true and correct.

[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.

WHEREFORE, the Notice of Deficiency Determination dated April 12, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$5,137	\$1,284	\$609	\$7,030

Interest is computed through May 19, 2005.

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 \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, 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]