

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18104
[REDACTED])	
Petitioner.)	DECISION
)	
)	

On April 6, 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 1998 in the total amount of \$3,272.

On June 8, 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 has not filed an Idaho income tax return for tax year 1998. On July 10, 2003, TDB sent a letter with a questionnaire to the petitioner to help the Commission properly determine the filing requirement of the petitioner. The petitioner did not respond to this letter, so [Redacted]. The Commission then issued a NOD to the petitioner [Redacted].

On June 8, 2004, a protest letter was faxed to TDB by the petitioner in which he stated that he could not locate a copy of his 1998 state return but “the return will show” he has a \$35 refund.

On June 9, 2004, TDB sent the petitioner a letter notifying him that his protest was timely filed and requested that the petitioner provide the information he had yet to provide by July 9, 2004.

On July 30, 2004, TDB sent the petitioner a letter requesting that his 1998 return be filed by August 20, 2004.

Since the petitioner did not file the return, his file was transferred to the Commission’s Legal/Tax Policy Division for further review.

On November, 17, 2004, the Tax Policy Specialist (policy specialist) sent the petitioner a letter to inform him of the alternatives for redetermining a protested NOD. A follow-up letter was sent on February 2, 2005. The petitioner did not respond to either letter.

The petitioner claims in his protest letter he is due a refund of \$35 for tax year 1998. However, Idaho Code section 63-3072(c) prohibits refunding or crediting the overpayment of Idaho income taxes withheld and Idaho Code section 63-3024A(g) does not allow a refund claim if the claim for credit or refund was not filed within three years of the due date of the return. The petitioner's 1998 return had a due date of April 15, 1999. The petitioner has not filed his 1998 return, and it is well outside the three-year statute of limitations; therefore, no credit or refund can be issued for that year.

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.

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 6, 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>
1998	\$2,037	\$509	\$869	\$3,415

Interest is computed through August 7, 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]
