

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 18599
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
	)	
	)	
	)	

---

On February 23, 2005, the Revenue Operations Division (RevOp) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted](taxpayer), proposing a penalty in the amount of \$240 for failure to file a timely statement of tax withheld on employee wages for tax year 2003.

The taxpayer filed a timely protest and petition for redetermination. She did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

Income Tax Administrative Rule 872.04 states:

**04. Employer’s Annual Reconciliation.** On or before the last day of February, employers shall file a return reconciling the tax remitted throughout the preceding calendar year and the state income tax withholding reported on the W-2s. (3-20-97)

**05. Employee’s Wage And Tax Statements.** Federal Form W-2 or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (7-1-99)

**a.** The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (3-20-97)

**b.** On or before the last day of February, each employer

shall file with the Tax Commission a W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. (3-20-97) (Emphasis added.)

Idaho Code § 63-3046(7)(e)(1) states:

**63-3046(7)(e)(1)** Any person who fails to file a statement of payment to another person required by this chapter, including the duplicate statement of tax withheld on wages, on the date prescribed therefor (including any extension of time for filing) shall, be subject to a penalty of two dollars (\$2.00) for each month or part of a month each statement is not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars (\$2,000). (Emphasis added.)

When RevOp determined the taxpayer had not filed copies of her employees' 2003 W-2s by the last day of February 2004, a letter was sent to the taxpayer asking for the documents. No response was received. On May 14, 2004, RevOp sent a second letter asking for the required copies of employee W-2 forms.

The second letter prompted the taxpayer to call. However, she did not talk with anyone. Instead, she left a voicemail message stating she had already complied with the requirement and did not see why she should be asked to provide an additional copy.

RevOp attempted to telephone the taxpayer to explain Tax Commission records did not show the copies of the taxpayer's employees' W-2s had been received. The taxpayer was not available to take that call, so RevOp left a message asking her to call back. The taxpayer did not return the call or send the documents. On December 8, 2004, RevOp sent the taxpayer a letter advising her of the penalty for failure to file copies of employee W-2s. Subsequently, two additional telephone attempts were made to reach the taxpayer. She was not available to take either call and did not call back as requested.

On February 23, 2005, RevOp sent the taxpayer a NODD advising her of the determination

of the penalty for ten months of delinquency. She responded with a timely protest and sent the missing copies of W-2s on March 8, 2005. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review. The taxpayer did not respond to a letter from the Tax Appeals Specialist wherein her appeal rights were explained.

Idaho Income Tax Administrative Rule 872 directs employers on the reporting and paying over to the Tax Commission all income tax that has been withheld from employees' wages. Section 04 of that Rule sets the requirement for an employer to file a return reconciling the tax remitted throughout the preceding year and the state income tax withholding reported on W-2s. Idaho employers are required to file a copy of all W-2s with the Tax Commission "on or before the last day of February" by Section 05 of Rule 872. The Rule is not unclear.

The penalty for not complying with the requirement for an employer to submit copies of the employees' W-2s before the end of February of the following year, two dollars for each month or part of a month each statement is not filed, is spelled out under Idaho Code § 63-3046. The Code is not unclear.

RevOp made many attempts to contact the taxpayer to secure compliance with the Rule to avoid a penalty for the taxpayer. However, the taxpayer did not return telephone calls or send the copies of the W-2s until after she received the NODD – a full year after the copies of her employees' W-2s were due to be filed.

The Tax Commission finds the penalty for failure to file a timely duplicate statement of tax withheld on wages to be appropriate.

WHEREFORE, the Notice of Deficiency Determination dated February 23, 2005, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pays a penalty in the amount of

\$240 for tax year 2003.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that I have on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

\_\_\_\_\_