

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19251
[REDACTED],)	
)	DECISION
Petitioner.)	
<hr style="width: 40%; margin-left: 0;"/>		
)	

On November 10, 2005, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) [Redacted] (petitioner) proposing income tax, penalty, and interest for the years 1999, 2000, 2001, and 2002 in the total amount of \$9,747.

On January 11, 2006, a timely protest and petition for redetermination was filed by the petitioner. An informal hearing has not been requested by the petitioner. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

The petitioner failed to file his 1999, 2000, 2001, and 2002 individual income tax returns. On October 19, 2004, November 26, 2004, January 14, 2005, and May 26, 2005, the TDB sent a letter with a questionnaire to the petitioner to his various addresses to help the Commission properly determine the petitioner's filing requirement. [Redacted].

The petitioner's protest letter was received by fax on January 11, 2006. In his letter he stated that he did not currently have tax records for 1999 at his disposal. The petitioner stated that he would submit this information as soon as he could have copies forwarded to him. The petitioner stated for 2000 the amounts outlined on the table sent to him did not correspond with his W-2 because there was an \$8,461 difference in gross income. The petitioner agreed with the TDB's calculation of his gross income for 2001 and 2002 and calculated he was due a refund for both years.

On January 12, 2006, the TDB sent the petitioner a letter explaining the adjustments made to his returns based on the withholding information submitted with his protest letter. In the TDB's letter, the petitioner was given the opportunity to withdraw his protest or continue with the protest process. The petitioner did not respond to this letter, so the petitioner's file was transferred to the Legal/Tax Policy Division for administrative review.

On July 11, 2006, 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 to the petitioner on August 30, 2006. The petitioner did not respond to either letter.

The petitioner's returns for the years 2001 and 2002 resulted in refunds. However, Idaho Code § 63-3072(c) provides for a limit on the time allowed to claim a refund.

63-3072. Credits and refunds. . . .

(c) Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions. (Emphasis added.)

Idaho Code § 63-3024A defines the credit and the time allowed to apply for a refund:

63-3024A. Credits and refunds. -- (a) Any resident individual not entitled to the credit allowed in subsection (b)(1), who is required to file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of twenty dollars (\$20.00) for each personal exemption for which a deduction is permitted by section 151(b) and (c) of the Internal Revenue Code if such deduction is claimed on the taxpayer's Idaho income tax return, and if the individual for whom the deduction is claimed is a resident of the state of Idaho. If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim

such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer . . .

(g) An application for any refund which is due and payable under the provisions of this section must be filed with the state tax commission within three (3) years of:

(i) the due date, including extensions, of the return required under section 63-3030, Idaho Code, if the applicant is required to file a return, or

(ii) the 15th day of April of the year following the year to which the application relates if the applicant is not required to file a return. (Emphasis added.)

The petitioner's 2001 and 2002 returns had due dates of April 15, 2002, and April 15, 2003, respectively. Even though the petitioner's return for 2001 showed a refund, the due date for this return was well outside the three-year statute of limitations, so the Commission must deny this refund. However, since the NOD in this case was issued prior to the expiration of the three-year statute of limitations for tax year 2002, the period of limitations is suspended. Idaho Code section 63-3072(i) states:

The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

Therefore, the petitioner's refund for tax year 2002 will be allowed.

Beyond those issues addressed above, the petitioner has not provided the Commission with information to establish that the amounts asserted in the NOD, as adjusted, are incorrect. As a result, the Commission will uphold the NOD as adjusted. A determination of the State Tax Commission is presumed to be correct. *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the petitioner to show that the deficiency is erroneous. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App.

1986).

[Redacted] provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law . . .

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

WHEREFORE, the Notice of Deficiency Determination dated November 10, 2005, as MODIFIED, 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>
1999	\$1,035	\$259	\$492	\$1,786
2000	1,610	403	637	2,650
2001	0	0	0	0
2002	(510)	0	0	<u>(510)</u>
			TOTAL DUE	<u>\$3,926</u>

Interest is computed through July 18, 2007.

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 _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2007, 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]
[REDACTED]

Receipt No.
