

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19750
[Redacted],)	
)	DECISION
Petitioners.)	
)	
)	
_____)	

On August 10, 2006, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination [Redacted] proposing income tax, penalty, and interest for the taxable years 1998 and 2000 through 2003 in the total amount of \$39,779.

On October 4, 2006, [Redacted] filed a timely appeal and petition for redetermination. [Redacted] did not respond to the Tax Commission's hearing rights letter and has not provided any additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that [Redacted] might have a filing requirement with the state of Idaho. The Bureau researched the Tax Commission's records and found that the [Redacted] had not filed Idaho individual income tax returns since 1996. The Bureau sent a letter [Redacted] asking about their requirement to file Idaho income tax returns for the tax years 1997 through 2004. The [Redacted] did not respond. The Bureau obtained additional information [Redacted] and determined [Redacted] did have a requirement to file Idaho income tax returns. The Bureau prepared married filing separate returns for the tax years 1998 and 2000 through 2003 [Redacted] and sent them both a Notice of Deficiency Determination.

Shortly thereafter, the Bureau discovered that [Redacted] was deceased. The Bureau rescinded the Notices of Deficiency Determination separately sent [Redacted] and reissued a Notice of Deficiency Determination [Redacted] as married filing joint. [Redacted] (taxpayer) protested the Bureau's determination. She stated that [Redacted] and she lived and worked in Texas in 1998. She also stated that the Bureau did not make any allowance for business expenses incurred or that she was in the process of a divorce in 2002 and 2003. The taxpayer stated she would prepare returns and file them within 60 days.

The Bureau allowed the taxpayer the time she requested and even extended it by at least another 60 days. Nevertheless, the taxpayer did not provide the returns as she stated. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission sent the taxpayer a letter explaining the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer did not respond. The Tax Commission sent a follow-up letter to the taxpayer, but still the taxpayer failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The Bureau received information from the Idaho Department of Labor that showed both [Redacted] were employed in Idaho. The Bureau obtained additional income information [Redacted] and determined that [Redacted] met the filing requirements of Idaho Code section 63-3030. The taxpayer did not contest the fact that she and [Redacted] were required to file Idaho income tax returns for the years 2000 through 2003. However, she did contest their requirement to file a 1998 Idaho income tax return. She stated they lived and worked in Texas during 1998. Based on this statement, the Bureau cancelled the Notice of Deficiency Determination for 1998, but continued to pursue the returns for 2000 through 2003. The taxpayer stated she would

provide the needed Idaho income tax returns, but as of the writing of this decision, no returns have been received from the taxpayer.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayer has provided nothing to show the returns prepared by the Bureau are in error. The taxpayer did state that for 1998 they lived and worked in Texas, and the Bureau subsequently cancelled that year's deficiency determination. However, the taxpayer's statement does not agree with the information provided [Redacted]. [Redacted] reported that [Redacted] received wages in 1998 in excess of \$27,000 from an Idaho employer. It also reported that [Redacted] received \$503 of wages in 1998 from an Idaho employer. This information does not agree with the taxpayer's statement that they lived and worked in Texas in 1998. Consequently, absent any other documentation or information from the taxpayer, the Tax Commission finds that cancelling the 1998 Notice of Deficiency Determination was inappropriate. Therefore, the 1998 Notice of Deficiency Determination is reasserted [Redacted].

The Bureau's determination of the tax deficiency was based upon [Redacted] filing their Idaho income tax returns as married filing joint. Idaho Code section 63-3031 states that a husband and wife may make a single return jointly. It further states that if a husband and wife elect to file a joint return for federal purposes, they are required to file a joint return for state purposes. The information obtained [Redacted] showed that [Redacted] did not file joint returns for their federal income taxes. In fact, the [Redacted] reported that no returns were filed [Redacted]. Since there was no election to file joint returns at the federal level, the taxpayer and [Redacted] were not required to file joint returns with the state.

Idaho Code section 63-3030 requires each individual with income over a specified amount to file an income tax return, and as previously noted, Idaho Code section 63-3031 allows a husband and wife to make a single return rather than two separate returns. However, as with federal joint returns, the taxpayer must elect to file a joint Idaho return absent the election at the federal level. It is not an election the Bureau or the Tax Commission can make for taxpayers. Therefore, the married filing joint returns prepared by the Bureau need to be changed to married filing separate with the income and deductions determined by Idaho's community property laws.

The taxpayer stated the Bureau did not allow for business expenses. However, the burden rests on the taxpayer to disclose his receipts and claim his proper deductions. United States v. Ballard, 535 F.2d 400 (1976). If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931). The taxpayer failed to provide any evidence or documentation that showed they were entitled to any business expenses.

The taxpayer also stated that the Bureau did not account for the divorce that she and [Redacted] were in the midst of beginning in 2002. The taxpayer may have filed for divorce in 2002, but apparently the divorce was never finalized because [Redacted] died before the divorce proceedings could be completed. Consequently, the taxpayer and [Redacted] were still legally married until [Redacted] died in 2003. Therefore, the appropriate filing status for the taxpayer for 2002 was married filing separate and for 2003 was single.

The Bureau added interest and penalty to the taxpayer's tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated August 10, 2006, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 612	\$ 153	\$ 319	\$ 1,084
2000	3,902	976	1,427	6,305
2001	512	128	150	790
2002	4,466	1,117	1,003	6,586
2003	1,707	427	292	<u>2,426</u>
			TOTAL DUE	<u>\$17,191</u>

IT IS FURTHER ORDERED and THIS DOES ORDER that the Estate of [Redacted] pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 612	\$ 153	\$ 319	\$ 1,084
2000	3,902	976	1,427	6,305
2001	512	128	150	790
2002	4,466	1,117	1,003	6,586
2003	1,707	427	292	<u>2,426</u>
			TOTAL DUE	<u>\$17,191</u>

Interest is computed to February 15, 2007.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

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]

Receipt No.
