

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 19808
[REDACTED]	)	
	)	DECISION
Petitioners.	)	
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On August 25, 2006, the Idaho State Tax Commission’s (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) [Redacted] (petitioners) proposing additional income tax, penalty, and interest for the taxable year 2001 in the total amount of \$54,791. The petitioners filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

The petitioners moved [Redacted] in 2001; however, the petitioners did not file an Idaho income tax return for tax year 2001. Based upon information acquired from the Idaho [Redacted], TDB determined that the petitioners had an Idaho filing requirement for 2001 and on August 25, 2006, issued a NODD for tax year 2001. The petitioners provided the [Redacted], as part of ongoing litigation with that state agency, their 2001 federal, [Redacted], and Idaho income tax returns. The Idaho return and other information submitted to the [Redacted] reflected that the petitioners were residing in Idaho during the first seven months of 2001 and that the petitioners had Idaho taxable income of \$469,489. Accordingly, TDB based the NODD on the figures reported on the Idaho income tax return provided to the [Redacted] and asserted the Idaho Code section 63-3046(c) nonfiler penalty.

In the petitioners’ petition for redetermination, the petitioners argued that:

- 1) The adjusted gross income is overstated by at least \$52,000.

- 2) Any portion of the above noted income earned while living in Idaho was offset by expenses directly attributable to the Idaho venture(s), from which a portion of that income was derived.
- 3) Taxes for 2001 were computed and duly paid to the IRS and [Redacted].

On November 21, 2006, the Commission sent the petitioners a letter informing them of their rights to an informal hearing. Since that date, a couple of phone conversations have taken place between the Commission and the petitioners in which the petitioners agreed to provide additional information. As of the date of this decision, the petitioners have not provided any additional documentation in support of their arguments nor have the petitioners provided the Commission with an explanation as to why the Idaho return submitted to the [Redacted] does not accurately reflect the petitioners' Idaho taxable income for 2001.

It is well established in Idaho that a Notice of Deficiency Determination issued by the State Tax Commission is presumed to be correct, and the burden is on the taxpayer to establish that the amount being assessed is erroneous. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984) (The burden of proof is on the taxpayer to prove that the decision of the Tax Commission is incorrect.); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986) (A State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous). In addition, under both Idaho and federal income tax law, it is the taxpayer who bears the burden of establishing that he or she is entitled to a deduction. Potlatch Corp. v. Idaho State Tax Com'n, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (1996); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 790 (1934). 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).

WHEREFORE, the Notice of Deficiency Determination dated August 25, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$36,039	\$9,010	\$11,337	\$56,386

Interest is calculated through June 30, 2007, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

An explanation of the petitioners' right to appeal this decision is included 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]

Receipt No.

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