

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20480W
[REDACTED],)	
)	DECISION
Petitioner.)	
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On June 25, 2007, 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 tax years 2003, 2004, and 2005 in the total amount of \$8,071.

A timely protest and petition for redetermination was filed by the petitioner and her husband. 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 affirming the NOD.

The petitioner and her husband failed to file their 2003, 2004, and 2005 individual income tax returns. On April 20, 2007, the TDB sent a letter with a questionnaire to the petitioner and her husband to help the Commission properly determine their filing requirement. The petitioner and her husband did not respond to this letter. [Redacted]. The Commission issued an NOD to the petitioner on June 25, 2007, [Redacted]. A community property split was used.

In the protest letter received by fax from the petitioner and her husband on August 27, 2007, they stated in part:

I believe the deficiency is grossly overstated and based upon gross earnings reported by several companies from whom I [Redacted] received payments for commissions earned in a home based business as a telecommunications agent during the period described in the deficiency. The determination fails to reflect the fact that the payments were gross commissions and those significant expenses were incurred in procuring those earnings – all of which would greatly reduce the amount upon which taxes are due.

In addition – [Redacted] and I moved from the state of Idaho in June 2005 and earnings obtained from these same companies after that date are not taxable by the state of Idaho. . . .

Further, I believe the amounts were calculated based upon single filing status and [Redacted] and I were and continue to be married and living together. I therefore request that I be allowed a period of time extending to November 27 (90 days) to prepare returns – file them – and pay the taxes due. - together with any accrued interest on the corrected amounts (if any).

In the process of moving from Idaho – many papers seem to have been lost or misfiled. To expedite me in the preparation of these returns - please send me copies of all 1099 statements and or employer statements that are in your possession and upon which your tax deficiency determinations were based.

The TDB sent the petitioner and her husband a letter dated August 29, 2007, which requested they send their 2003, 2004, and 2005 Idaho individual income tax returns by November 27, 2007. The TDB attached the 1099 and employer information to allow the petitioner and her husband to prepare their returns. If the issues of the petitioner could not be resolved in the TDB, her file would be transferred to the Commission's Legal/Tax Policy division for further review. The petitioner did not respond to this letter.

On December 3, 2007, the TDB sent the petitioner and her husband a letter that requested they file their 2003, 2004, and 2005 Idaho individual income tax returns by December 21, 2007. The petitioner did not respond to this letter either.

On January 30, 2007, the tax policy specialist (policy specialist) sent the petitioner and her husband a letter to inform them of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioner and her husband on March 20, 2007. The petitioner did not respond to either letter.

The Commission has no knowledge of the petitioner's husband's business expenses nor does

it know the income of the petitioner and her husband in the state to which they moved.

For the Notice of Deficiency Determination, the provisional returns were computed for the petitioner and her husband as married filing separate. Idaho Code § 63-3031(a) gives a husband and wife the *option* to file jointly. Since the petitioner and her husband did not file their 2003, 2004, and 2005 returns, they have not elected to file as joint filers for these years, and the Tax Commission cannot make this election for them.

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.

[Redacted] The petitioner has not provided the Commission with a contrary result to the determination of her income [Redacted] Therefore, the Commission must uphold the deficiency.

WHEREFORE, the Notice of Deficiency Determination dated June 25, 2007, 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>
2003	\$3,291	\$823	\$1,053	\$5,167
2004	2,121	530	552	3,203
2005	224	56	45	<u>325</u>
			TOTAL DUE	<u>\$8,695</u>

Interest is computed through January 27, 2009, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

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.

DATED this ___ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____, 2008, 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.
