

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20727
[Redacted])	
)	DECISION
Petitioners.)	
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On September 7, 2007, the Idaho State Tax Commission's (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioners) proposing additional income tax, penalty, and interest for the taxable years 2001, 2002, 2003, 2004, and 2005 in the total amount of \$37,959. The petitioners filed a timely petition for redetermination. Subsequent to the issuance of the NODD and prior to transferring the petition for redetermination to the Legal/Tax Policy section, the petitioners filed returns for 2001, 2002, and 2003. The TDB modified the NODD by accepting the petitioners' returns for taxable years 2001, 2002, and 2003, leaving only taxable years 2004 and 2005 at issue. The modification of the NODD reduced the amount sought from \$37,959 to \$21,460. The petitioners were informed of their appeal rights. The Tax Commission, having reviewed the file, hereby issues its decision.

Based upon information available to the Commission, the TDB determined that the petitioners had an Idaho filing requirement for tax years 2001 through 2005. The TDB initiated contact with the petitioners requesting that the petitioners file an Idaho income tax return for taxable years 2001 through 2005 or, in the alternative, explain why the petitioners would not have an Idaho filing requirement.

Since the petitioners did not provide the Idaho returns as requested, the TDB issued the NODD. The petitioners filed a timely petition for redetermination. In the petition, the petitioners did not dispute that they had an Idaho filing requirement for the years in question; instead, they indicated that they had lost tax information from their computer and were working

with an Idaho accountant to find the necessary paper trail to allow them to prepare and file the returns. Prior to the petition for redetermination being transferred to the Legal/Tax Policy section, the TDB was successful in obtaining from the petitioners income tax returns for taxable years 2001 through 2003. The TDB modified their NODD accordingly and transferred the petition for redetermination to the Legal/Tax Policy section for resolution of taxable years 2004 and 2005.

The Commission received the petitioners' 2004 Idaho income tax return during the appeals process, which the Commission accepts in lieu of the amount shown in the NODD for taxable year 2004; however, as of the date of this decision, the petitioners have not provided any information that would resolve this case in the petitioners' favor for taxable year 2005. It is the petitioners' burden of proving error on the part of the deficiency determination for taxable year 2005. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioners have not met this burden of proof of showing that the NODD prepared by the TDB for taxable year 2005 is incorrect, the Commission upholds the TDB's determination for taxable 2005. Furthermore, the acceptance of the actual return for taxable year 2004, in lieu of the NODD, does not preclude the Commission from conducting an examination of the 2004 Idaho income tax return during the period allowable under Idaho Code section 63-3068.

WHEREFORE, the Notice of Deficiency Determination dated September 7, 2007, is hereby MODIFIED, 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>
2004	(\$ 256)	0	0	(\$ 256)
2005	8,158	\$2,040	\$1,914	<u>12,112</u>
			TOTAL DUE	<u>\$ 11,856</u>

Interest is calculated through January 15, 2010, 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 enclosed with this decision.

DATED this ____ day of _____ 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2009, 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.