

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20813
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On November 9, 2007, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (Petitioner) asserting income tax, penalty, and interest in the amount of \$3,605 for the 2005 and 2006 taxable years. The NOD advised the Petitioner that, if he disagreed with the deficiency determined by the Bureau, he could petition the Commission for a redetermination.

The Petitioner sent a letter dated December 17, 2007, which the Commission treated as a petition for redetermination. The Petitioner submitted an additional 134 page document on January 22, 2008, to be considered in his case. In a letter dated January 18, 2008, the Commission notified the Petitioner that he could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the Bureau or, in the alternative, submit additional information to show why the deficiency should be redetermined. In a letter dated January 26, 2008, the Petitioner asked to postpone the hearing until [Redacted] had processed his 2006 return. The Commission sent the Petitioner a letter dated April 14, 2008, informing him that the informal hearing was scheduled for June 24, 2008. The Petitioner responded to this letter in an April 29, 2008, letter again asking for the hearing to be postponed because [Redacted] still had not processed his 2006 return. In a letter dated September 9, 2008, the Commission informed the Petitioner that a hearing would be held on September 29, 2008.

This decision is based on the information contained in the Commission's files including information supplied by the Petitioner prior to and at the hearing. The Commission has reviewed the file and the supplemental documents provided by the Petitioner and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau with interest updated through April 30, 2009.

The Petitioner filed Idaho individual income tax returns dated May 27, 2008, for the 2005 and 2006 taxable years showing zero income. Attached to the 2006 return was an Idaho substitute Form W-2 showing zero wages or compensation but showing federal and state income tax withholding and FICU and FUTA withholding. The explanation on the substitute Form W-2 stated that the original Form W-2 mischaracterized the Petitioner's income as wages according to the definitions provided by the Internal Revenue Code §§ 3121 and 3401. Attached to the 2005 return was a corrected Form 1099 showing zero compensation and a sworn declaration stating that no payments were received in connection with the performance of the duties of a public office.

The Bureau determined the original amounts on the Forms W-2 and Forms 1099 based on federal information. The wage and compensation amounts listed on the original Form W-2 and Form 1099 were greater than the Idaho filing requirement. The Bureau then issued an NOD which included a description of the information relied upon, a document showing the calculation of interest, and an explanation of the Petitioner's right to request a redetermination of the deficiency. The Bureau assessed a fraud penalty because the substitute Form W-2 and Form 1099 were allegedly altered by the Petitioner showing evidence of intent to evade taxes.

The Petitioner responded to the NOD by sending a letter in which he explained he did not have any Idaho taxable income. The letter was treated as a timely protest of the NOD.

The Petitioner worked for [Redacted] during the 2005 and 2006 taxable years. According to the original Forms W-2 and 1099s, the Petitioner received \$8,186 from [Redacted] for 2005 and \$8,432 from [Redacted] for 2006. In correspondence with the Commission, the Petitioner stated that the amounts earned working for [Redacted] do not constitute wages and taxable income. He explained that in order for the state of Idaho to tax him, he must have federal taxable income, and he adamantly denied receiving any federal taxable income. At the hearing in this matter, the Petitioner went through his argument in detail.

The Petitioner puts forth several common arguments repeatedly used by those attempting to avoid taxation of their income. Although the Petitioner cites Internal Revenue Code § 61, he overlooks the key language of that section. Section 61 states that gross income is income from *whatever source* derived. The general rule, therefore, is that *all* income is included in gross income unless there is a specific exception or exclusion in some other section of the Internal Revenue Code. There is no exception for the income that the Petitioner received. Thus, it does not matter whether the income he received is characterized as wages or compensation—it is simply income for which he will be taxed.

When a person fails to file a tax return or to pay the proper amount of individual income tax, Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency Determination. The basis of the NOD in this case is the Petitioner's original Form W-2 income and 1099 income amounts. It is well settled in Idaho that an 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 taxpayer to show that the tax deficiency is erroneous. *Id.* The Petitioner does not set forth any new arguments to show that the NOD

prepared by the Tax Commission is incorrect. Therefore, based on the information submitted by the Petitioner, the Tax Commission finds that the amounts shown due on the NOD are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated November 9, 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>
2005	\$1,495	\$748	\$298	\$2,541
2006	764	382	104	<u>1,250</u>
			TOTAL DUE	<u>\$3,791</u>

Interest is calculated through April 30, 2009, and will continue to accrue 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 _____, 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.
