

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

In the Matter of the Protest of )  
 ) DOCKET NO. 21261  
[REDACTED], )  
 )  
 ) DECISION  
Petitioner. )  
\_\_\_\_\_ )

On May 1, 2008, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing income tax, penalty, and interest for the taxable years 2004 through 2006 in the total amount of \$8,342.

On July 1, 2008, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but stated through his representative that he would submit income tax returns for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information from the Tax Commission's collection staff that the taxpayer was required to file Idaho individual income tax returns for 2004 through 2006 but failed to file them. The Bureau sent the taxpayer a letter asking him about his missing income tax returns. The taxpayer responded that the returns would be filed within ninety days. However, because of the taxpayer's prior history, the Bureau only allowed the taxpayer a couple of weeks to provide his returns. When the taxpayer failed to provide his returns by that date, the Bureau prepared income tax returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. Once again, the taxpayer stated he would provide income tax returns for the years in question. He stated the 2004 year would be

done and to the Bureau within two weeks with the remaining two returns completed and to the Bureau within sixty days.

The Bureau allowed the taxpayer the additional time requested, and it did receive the taxpayer's 2004 income tax return. However, after the sixty days had passed, the taxpayer still failed to provide either his 2005 or 2006 returns. The Bureau accepted the taxpayer's 2004 return and cancelled the Notice of Deficiency Determination for that year. But, since the taxpayer did not submit returns for 2005 and 2006, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter discussing 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. The taxpayer contacted the Tax Commission and stated his 2005 information was at his tax preparer's office. He stated the return would be sent to the Tax Commission as soon as it was completed. A month and a half later, the Tax Commission received the taxpayer's 2005 return. The Tax Commission allowed the taxpayer additional time to submit his 2006 return, but in the months that followed, nothing was received. The Tax Commission, believing the taxpayer had ample time to prepare and submit his income tax returns, decided the matter based upon the information available.

The taxpayer did not dispute his requirement to file Idaho income tax returns. His only statement was that he would provide the proper income tax returns. The taxpayer did provide returns for the taxable years 2004 and 2005; however, nothing was provided for tax year 2006. The Tax Commission reviewed the returns the taxpayer submitted and found that they were a better representation of the taxpayer's Idaho taxable income than the 2004 and 2005 returns

prepared by the Bureau. Therefore, the Tax Commission agreed with the Bureau and accepts the taxpayer's 2004 return in lieu of the 2004 return the Bureau prepared. In addition, the Tax Commission accepts the taxpayer's 2005 return in lieu of the 2005 return the Bureau prepared. However, both of these returns are subject to the normal review process of the Tax Commission and subject to the statute of limitations beginning on the date each of the returns was provided.

The taxpayer's 2004 and 2005 returns both resulted in refunds to the taxpayer. However, Idaho Code section 63-3072 states that a claim for credit or refund must be made within three years of the due date of the return for the taxable year in which the overpayment of tax occurred. The taxpayer's 2004 return was due on April 15, 2005. The taxpayer made his claim for refund when he submitted his 2004 return on September 15, 2008, well past the three-year statute for credit or refund. Therefore, the Tax Commission cannot refund or credit the amount claimed on the taxpayer's 2004 return.

As for taxable year 2006, the taxpayer has not provided a return or any other information to show the Bureau's determination was incorrect. 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 failed to meet his burden. The Tax Commission reviewed the 2006 return the Bureau prepared and found that the Bureau based its determination on the total sales the taxpayer reported to Idaho. The Tax Commission realizes the taxpayer probably had business expenses to offset his gross sales; however, whether and to what extent deductions shall be allowed depends upon legislative grace and only as there is clear provision therefor can any particular deduction be allowed. Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its

terms. New Colonial Ice Co., Inc. v. Helvering, 292 US. 435, 54 S.Ct. 788 (1934). The burden rests upon the taxpayer to disclose his receipts and claim his proper deductions. United States v. Ballard, 535 F.2d 400 (1976). The taxpayer bears the burden of proving that he is entitled to the deduction. Higgins v. C.I.R., T. C. Memo. 1984-330 (1984). 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).

Based upon the information available, the Tax Commission finds the 2006 return prepared by the Bureau is a reasonable representation of the taxpayer's Idaho taxable income. Therefore, the Tax Commission upholds the Bureau's determination of the taxpayer's Idaho income tax for 2006.

The Bureau added interest and penalty to the taxpayer's Idaho tax. 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 May 1, 2008, 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 (computed to July 1, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$ 0	\$ 0	\$ 0	\$ 0
2005	(3)	0	0	(3)
2006	2,017	504	292	<u>2,813</u>
			TOTAL DUE	<u>\$2,810</u>

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

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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]  
[REDACTED]

Receipt No.