

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 21795
[Redacted]	)	
Petitioner.	)	DECISION
	)	
	)	
_____	)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated February 26, 2009, asserting additional liability for Idaho income tax, penalty, and interest in the total amount of \$711 for 2005.

The petitioner filed his 2005 Idaho income tax return as a resident of Idaho. The staff of the Commission found, pursuant to a redetermination of the petitioner’s income by [Redacted], that he had not reported all of his compensation and that he had also failed to include unemployment compensation from [Redacted] in his Idaho taxable income. Accordingly, this additional income was reflected producing the liability that was asserted by the Notice of Deficiency Determination. The petitioner appealed.

The petitioner set out two points:

1. He stated that he had been a resident of California, and
2. He questioned whether the statute of limitations had expired.

The petitioner submitted a DD Form 214 which set out some additional information. It indicated that the petitioner had been discharged from the military on February 9, 2005. It also stated his home of record was California and that his mailing address, after separation, would be in Idaho.

Due to the petitioner’s home of record being outside Idaho while he was in the military, he didn’t become an Idaho resident until February 9, 2005. He should have filed as a part-year resident

rather than as an Idaho resident for the entire year of 2005. Also, since his home of record was outside Idaho, the compensation that he received from the military should not have been included in Idaho taxable income.

Since the petitioner was an Idaho resident upon separation from the military, the unemployment compensation that he received from California would be taxable by Idaho. If the petitioner had filed a California income tax return for 2005 reporting the unemployment compensation to that state, he would have received a credit for taxes paid another state. However, the information in the file indicates that he did not file a 2005 California income tax return. Therefore, no credit is available.

The applicable statute of limitations with regard to this matter is set out in Idaho Code § 63-3068(f):

When Idaho taxable income or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitation for issuing a notice of deficiency shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the state tax commission by the taxpayer, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, only those specific items of income, deductions, gains, losses, or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

Upon reviewing this portion of the statute, the Commission finds that the statute of limitations had not expired at the time that the Notice of Deficiency Determination was issued.

WHEREFORE, the Notice of Deficiency Determination dated February 26, 2009, is hereby MODIFIED, and as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (computed to January 31, 2010):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$363	\$18	\$86	\$467

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]

Receipt No.

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