

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20585
[Redacted])	
)	DECISION
Petitioners.)	
_____)	

On July 27, 2007, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable years 2002 through 2005 in the total amount of \$79,421. A timely appeal and petition for redetermination was filed by the taxpayers. The taxpayers did not request an informal hearing before the Commission, but they did provide one piece of income information pertaining to taxable year 2002 for the Commission to consider. The Commission, having reviewed the file, hereby issues its decision modifying the NODD.

This is a non-filer case. The taxpayers are residents of Nevada. However, the taxpayers are the owners [Redacted], which conducts business in Idaho. The taxpayers had an active withholding account for the years contained in the NODD and submitted all required payroll reconciliation returns. But when the Bureau could not find any record of the taxpayers' 2002 through 2005 Idaho individual income tax returns, the taxpayers were sent a letter advising them of the missing returns and asking them for an explanation. The taxpayers did not respond. [Redacted].

Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency -- Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

Idaho Code section 63-3030(a)(2) states in pertinent part:

(a) Returns with respect to taxes measured by income in this chapter shall be made by the following: . . .

(2) Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of two thousand five hundred dollars (\$2,500) . . .

Based on the [Redacted] information and the amount of total wages reported by the taxpayers on Form 956, the Bureau determined the taxpayers' total sales in Idaho exceeded the filing requirement of Idaho Code section 63-3030. The taxpayers were therefore required to file and report their Idaho source income to Idaho.

The Bureau prepared the missing returns on behalf of the taxpayers and sent them an NODD. On September 25, 2007, the taxpayers appealed the NODD stating they believed the methodology used to compute the amount owed was flawed because it incorrectly added revenue not produced in Idaho. The taxpayers stated all returns would be filed outlining the correct amounts due or not due. They requested an additional sixty days in which to provide the information.

On October 3, 2007, the Bureau acknowledged the protest and granted the taxpayers the additional time requested, until December 3, 2007, to complete returns. Two subsequent

extensions were requested by the taxpayers accompanied each time by the promise of actual returns. When the last extension deadline came and went with no returns being received, the file was transferred to the Legal/Tax Policy department for administrative review.

The taxpayer did not respond to a letter advising him of his appeal rights. A follow-up letter was sent on July 24, 2008. The taxpayers responded by phone on August 4, 2008. They did not request a hearing but instead requested another extension of time in which to prepare actual returns.

On September 23, 2008, the Commission received a “sample” 2002 return along with a profit and loss statement [Redacted]. The sample return did not follow Idaho Code section 63-3027 and did not utilize Form 402, Idaho Individual Apportionment for Multistate Businesses, and therefore was not accurate. The taxpayers were notified of the miscalculations and given the appropriate forms and instructions in order to complete the returns. On October 8, 2008, another “sample” return for taxable year 2002 was received but again was not accurate. The second “sample” return was accompanied by a Form 402. However, the return did not correctly apply the federal limitations to the standard deduction and itemized deductions and, therefore, did not show an accurate amount of tax due.

The taxpayers’ intent was to complete the return for taxable year 2002 correctly and, once they had the methodology figured out, complete the returns for taxable years 2003 through 2005. However, the taxpayers have failed to provide anything other than “sample” returns for 2002 and empty promises for quite some time. The time has come for the Commission to decide this matter based on the limited amount of information available.

The NODD prepared by the Bureau was based on information obtained [Redacted] and those records retained by the Tax Commission. The NODD did not take into account the apportionment factor for multistate businesses.

If you are a nonresident transacting business in Idaho and another state, your entire business income is subject to Idaho apportionment. The elements of the apportionment formula are the property, sales, and payroll factors of your business. The profit and loss statement provided by the taxpayers for taxable year 2002 allowed the Commission to calculate two of the apportionment factors, sales and payroll, and determine the taxpayers' business income attributable to Idaho for 2002.

For taxable years 2003 through 2005, the Commission used a formula to determine the amount of income attributable to Idaho.

From the 2002 income statement provided by the taxpayers, a percentage of total income attributable to Idaho could be determined. That percentage was then used to estimate the total sales attributable to Idaho to be used in the sales apportionment factor for taxable years 2003 through 2005. Because the taxpayers filed returns relating to payroll, the payroll apportionment factor could be determined. The two apportionment percentages were used by the Commission to determine an amount of income attributable to Idaho. A filing status of married, filing joint was used to determine the taxpayers' liability. The taxpayers were given dependency exemptions for four children in 2002 and 2003, five in 2004, and four in 2005, as shown in [Redacted] records. The penalty and interest additions were calculated in conformity with Idaho Code §§ 63-3045 and 63-3046.

The taxpayers have failed to provide much more than promises and excuses since they were first notified of the missing Idaho individual income tax returns in May 2007.

The Commission believes this is a reasonable estimate of the taxpayers Idaho income tax liability. Therefore, the NODD issued by the Bureau dated July 27, 2007, is hereby MODIFIED, and AS MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$110	\$28	\$47	\$185
2003	18	10	7	35
2004	10	10	4	24
2005	612	153	155	<u>920</u>
			TOTAL DUE	<u>\$1,164</u>

Interest is computed through May 31, 2010.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.
