

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

In the Matter of the Protest of )  
[Redacted] ) DOCKET NO. 21730  
 )  
 ) DECISION  
Petitioner. )  
\_\_\_\_\_ )

On September 28, 2007, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable years 2002 through 2005 in the total amount of \$33,972. Due to an administrative error, however, this NODD was rescinded by the Bureau on July 11, 2008. On August 5, 2008, the Bureau reissued the NODD to the taxpayer proposing income tax, penalty, and interest for taxable years 2002 through 2006 in the total amount of \$43,594.

A timely protest and petition for redetermination was filed by the taxpayer. An informal hearing has not been requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NODD.

When the Bureau could not find any record of the taxpayer’s 2002 through 2006 Idaho individual income tax returns, the taxpayer was sent a letter advising him of the missing returns and asking him for an explanation. The taxpayer did not respond.

Commission records show the taxpayer is owner of [Redacted]. The business is an S-corporation with the taxpayer being the lone shareholder. The Bureau issued an NODD for the business for taxable years 2002 through 2006, which was not protested. The business NODD, in the total amount of \$245, proposed the minimum tax due pursuant to Idaho Code section 63-

3025, in addition to penalty and interest. The S-corporation income was deducted from taxable income and flowed through to the taxpayer's individual NODD.

Because the taxpayer did not file his state income tax returns, the Bureau prepared provisional returns and issued an NODD. [Redacted]. The taxpayer protested the Bureau's determination.

The taxpayer's protest letter dated November 28, 2007, stated that he believed the adjusted gross income figures used to calculate tax were significantly overstated and that he had business expenses that he was not given credit for. The taxpayer stated he would be submitting actual returns within thirty days.

On December 3, 2007, the Bureau sent the taxpayer a letter acknowledging the protest and granting him the additional time requested. A subsequent request for returns was made by the Bureau on January 30, 2008; the taxpayer did not respond.

The Bureau notified the taxpayer on July 11, 2008, that the NODD dated September 28, 2007, was cancelled. A revised NODD was issued by the Bureau on August 5, 2008. A final request for returns was made on November 11, 2008, and when the taxpayer failed to respond or provide actual returns, his file was transferred to the Legal/Tax Policy division of the Commission for administrative review.

The taxpayer did not respond to a letter advising him of his appeal rights. A follow-up letter was sent on April 21, 2009. The taxpayer responded on April 30, 2009. He did not request a hearing but instead requested an additional three weeks in which to prepare actual returns.

The NODD was based on the total Idaho sales reported on the taxpayer's monthly sales tax returns for taxable years 2002 through 2006. Because Department of Labor records show

employee wages paid by the taxpayer's business for 2005 and 2006, an expense for payroll was allowed in those years to offset the income.

On July 13, 2009, the taxpayer provided the Commission with Idaho individual income tax returns for taxable years 2002 through 2006. The returns were reviewed but not accepted. [Redacted]. Furthermore, the taxpayer failed to submit business returns for [Redacted], the S-corporation that generated the income reported on his individual returns. On July 16, 2009, the individual income tax returns were sent back to the taxpayer along with a letter explaining why they were not acceptable.

The taxpayer has not provided the Commission with a contrary result to the determination of his income for taxable years 2002 through 2006 based on the total Idaho sales reported on the taxpayer's Idaho sales tax return. The individual returns submitted by the taxpayer were not taken in to consideration. The Commission has an obligation to treat taxpayers alike based on objective information submitted through proper channels and in proper form. The sales data and Department of Labor records are such information. The income shown on the returns submitted by the taxpayer, while in proper form, was unsubstantiated, and the forms were not signed.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). It is the taxpayer's responsibility, and the burden rests upon them to disclose their receipts and claim their proper deductions. United States v. Ballard, 535 F.2d 400 (1976). The Commission recognizes that the taxpayer may have had business expenses to offset the income; yet, if the taxpayer is unable to provide adequate proof of any material fact upon which a deduction

depends, no deduction is allowed and the taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931).

Having presented no information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Therefore, the Commission must uphold the deficiency. The penalty and interest additions were calculated in conformity with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated August 5, 2008 is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$6,147	\$1,537	\$2,608	\$10,292
2003	6,129	1,532	2,276	9,937
2004	4,372	1,093	1,361	6,826
2005	6,849	1,712	1,720	10,281
2006	6,073	1,518	1,144	<u>8,835</u>
			TOTAL DUE	<u>\$46,171</u>

Interest is calculated through May 15, 2010.

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

An explanation of the taxpayer's 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.

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