

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 21742
[Redacted],	)	
	)	DECISION
Petitioners.	)	
	)	

---

On December 9, 2008, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioners) proposing income tax, penalty, and interest for taxable years 2004, 2005, and 2006 in the total amount of \$1,286.

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

The petitioners failed to file their 2004, 2005, and 2006 individual income tax returns. On September 29, 2008, the TDB sent a letter with a questionnaire to the petitioners notifying them of the missing returns. The petitioners did not respond to this letter. [Redacted]. The Commission issued an NOD to the petitioners on December 9, 2008, [Redacted].

In the petitioners' protest letter received February 11, 2009, [Redacted] stated that she was not disputing that she owed for taxable year 2004. [Redacted] stated that she needed to locate misplaced papers for 2005 and 2006 in which they were due small refunds but never filed for them. [Redacted] requested they be given a couple more weeks to find these documents

The TDB sent the petitioners a letter dated January 12, 2009, which stated that the TDB would retain the petitioners' file while they awaited the information and/or completed returns the petitioners had yet to provide. The TDB requested the petitioners provide the information by March

20, 2009. The petitioners did not respond to this letter. If the petitioners' issues could not be resolved in the TDB, their file would be transferred to the Commission's Legal/Tax Policy Division for further review.

On August 14, 2009, the tax policy specialist (policy specialist) sent the petitioners a letter to inform them of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioners on October 2, 2009. The petitioners did not respond to either letter.

The policy specialist reviewed the W-2 Wage and Tax Statements filed by the petitioners' employers with the Commission. The petitioners' W-2s for 2004 and 2006 were found in the Commission's records and the deficiencies for those years have been modified accordingly.

The policy specialist requested and received the petitioners' 2005 W-2 Wage and Tax Statements from the [Redacted] School District. The petitioners' W-2 for 2005 was used to modify the Commission's provisional return for that year.

The petitioners' return for 2006 resulted in a refund. However, Idaho Code section 63-3072(c) states that a claim for refund or credit of the overpayment of Idaho income taxes withheld shall be made within three years from the due date of the return. Idaho Code section 63-3024A(g) states that a refund claim must be filed within three years of the due date of the return. The petitioners' 2006 return had a due date of April 15, 2007.

Since the due date of the petitioners' 2006 provisional return is well outside the three-year statute of limitations, the Commission would normally deny this refund. However, since the NOD in this case was issued prior to the expiration of the three-year statute of limitations for taxable year 2006, the period of limitations is suspended for that year. Idaho Code section 63-3072(i) states:

The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission

of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

Therefore, the petitioners' refund for taxable year 2006 will be refunded.

The petitioners have not provided the Commission with information to establish that the amounts asserted in the NOD, as adjusted, are incorrect. As a result, the Commission will uphold the NOD, as adjusted. A determination of the State Tax Commission is presumed to be correct. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the petitioners to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986).

[Redacted] The petitioners have not provided the Commission with a contrary result to the determination of their income [Redacted] Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated December 9, 2008, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$291	\$73	\$99	\$463
2005	10	10	3	23
2006	(130)	0	0	<u>(130)</u>
			TOTAL DUE	<u>\$356</u>

Interest is computed through December 24, 2010 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

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

An explanation of the petitioners' 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.

---