

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22094
[Redacted])	
)	DECISION
Petitioner.)	
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On May 19, 2009, the Idaho State Tax Commission’s (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing additional income tax, penalty, and interest for taxable years 1998, 1999, 2000, 2001, 2002, 2004, 2005, and 2006 in the total amount of \$39,996. The petitioner filed a timely petition for redetermination. The petitioner was informed of his appeal rights. The Commission, having reviewed the file, hereby issues its decision.

Based upon information available to the Commission, the TDB determined that the petitioner had an Idaho filing requirement for taxable years 1998 through 2002 and 2004 through 2006. The TDB initiated contact with the petitioner requesting the petitioner file an Idaho income tax return for taxable years 1998 through 2002 and taxable years 2004 through 2006 or, in the alternative, explain why the petitioner would not have an Idaho filing requirement.

Since the petitioner did not provide the Idaho returns as requested, the TDB issued the NODD. The petitioner filed a timely petition for redetermination dated July 21, 2009. In the petition, the petitioner did not dispute that he had an Idaho filing requirement for these years; instead, he stated that he has “been overwhelmed with financial issues, and am pursuing potential remedies to this situation by retaining legal counsel. I am finalizing this immediately, and need to be able to have time for attorney’s review of the documentation.” In a letter dated July 21, 2009, the petitioner indicated that he had been interviewing attorneys and will be finalizing a relationship within the next several days. More specifically, the petitioner indicated

that the legal issues that needed to be reviewed included “whether or not there are recourse issues with prior employers, any responsibility on my part by maintaining a residence in Idaho while being employed [Redacted], and whether any of these issues would be affected by my personal bankruptcy filing in 2008.” Since the TDB was unsuccessful in its attempts to procure the required returns from the petitioner, the petitioner’s petition was forwarded to the Legal/Tax Policy section for resolution.

The petitioner was informed of his appeal rights in a letter dated November 24, 2009. In the petitioner’s letter dated December 23, 2009, the petitioner opted to provide his returns in lieu of the hearing available under Idaho Code section 63-3045(2); however, the petitioner indicated that he would be providing the Commission with a return once every two weeks starting with January 15, 2010. The Commission, in its letter dated December 30, 2009, set forth a time line for the filing of the returns and included the following sentence “If you fail to file a valid Idaho return, including the attachment of a copy of your [Redacted] return, by the date shown above, a decision may be issued based upon the information available to the Commission.”

On February 1, 2010, the Commission received the petitioner’s Idaho Form 40 for taxable year 2002; however, the petitioner failed to attach a copy of his federal income tax return to the Idaho income tax return. In a letter dated February 8, 2010, the Commission requested that the petitioner provide a copy [Redacted] income tax return. The Commission explained that in accordance with Idaho Income Tax Administrative Rule 800.02, the petitioner is required to attach a complete copy of his [Redacted] return in order to file a valid Idaho income tax return. Additionally, the Commission requested that the petitioner attach a copy of his [Redacted] return when filing the remaining Idaho returns.

The Commission received the petitioner’s 2004, 2005, and 2006 Idaho Form 40 on February 16, 2010, March 17, 2010, and March 2, 2010, respectively. Once again, the petitioner failed to attach a copy of his [Redacted] income tax return. In a letter accompanying the filing of the 2004 Idaho Form 40, the petitioner stated that “I am sending you what I have, as I have not yet filed these [Redacted] returns, and am working on accumulating all past data to do so. I cannot keep this schedule with the state if this is a requirement; I will supplement this information as it becomes available.”

Since the petitioner has failed to attach a copy [Redacted] when filing his Idaho Form 40, the Idaho Form 40 received by the Commission for taxable years 2002, 2004, 2005, and 2006 are not considered valid returns under Idaho Income Tax Administrative Rule 800.02. A taxpayer who does not file a valid income tax return is considered to have filed no return. Idaho Income Tax Administrative Rule 800.03. Accordingly, the Commission issues its decision based upon the information available to the Commission.

In the NODD, the TDB calculated the amount of additional tax due as follows:

	1998	1999	2000	2001	2002	2004	2005	2006
Wages	\$48,532	\$65,450	\$104,620	\$76,951	\$9,880	\$46,624	\$72,028	\$53,360
1099-Int	11	11	11	12	25		81	10
1099-R				2,372				10
1099-Misc				7,608				
1099-B	17,772					1,616		
K-1								4,238
Subtotal	66,315	65,461	104,631	86,943	9,905	48,240	72,109	57,618
Standard Deduction	(4,250)	(4,300)	(4,400)	(4,550)	(4,700)	(4,850)	(5,000)	(5,150)
Personal Exemption	(2,700)	(2,750)	(2,800)	(2,900)	(3,000)	(3,100)	(3,200)	(3,300)
Idaho Taxable Income	\$59,365	\$58,411	\$97,431	\$79,493	\$2,205	\$40,290	\$63,909	\$49,168
Idaho Tax	\$4,615	\$4,537	\$7,634	\$5,934	\$58	\$2,858	\$4,692	\$3,533
Idaho Withholdings	0	0	0	(2,800)	0	(2,111)	(3,644)	(2,707)
Grocery Credit	(15)	(15)	(15)	(20)	(20)	(20)	(20)	(20)
PBF tax	10	10	10	10	10	10	10	10
Amount of tax due	\$4,610	\$4,532	\$7,629	\$3,124	\$48	\$737	\$1,038	\$816

Interest was included in the NODD in accordance with Idaho Code section 63-3045 as well as the Idaho Code Section 63-3045(c)(1) failure to file an Idaho income tax return penalty.¹ The penalty percentage is 5 percent per month with a maximum rate of 25 percent.

It is the petitioner's burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioner has not met this burden of proof of showing that the Notice of Deficiency Determination prepared by the TDB for taxable years 1998 through 2002 and 2004 through 2006 are incorrect, the Commission upholds the TDB's determination as shown in the NODD.

WHEREFORE, the Notice of Deficiency Determination dated May 19, 2009, is hereby AFFIRMED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$ 816	\$ 204	\$ 154	\$ 1,174
2005	1,038	260	261	1,559
2004	737	184	230	1,151
2002	48	12	20	80
2001	3,124	781	1,526	5,431
2000	7,629	1,907	4,314	13,850
1999	4,532	1,133	2,925	8,590
1998	4,610	1,153	3,317	9,080
			TOTAL DUE	<u>\$40,915</u>

Interest has been updated and is calculated through May 15, 2010, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

¹ For years prior to taxable year 2002, the failure to file a return penalty was contained in other subsections of Idaho Code section 63-3046 depending on the taxable year; however, the penalty percentage remained the same.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

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.