

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22511
[Redacted])	
)	DECISION
Petitioner.)	
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On January 7, 2009, the Idaho State Tax Commission's (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing additional withholding tax, penalty, and interest for taxable year 2005 in the total amount of \$3,754. On that same day, the TDB issued a modified NODD wherein the proposed additional withholding tax, penalty, and interest due for taxable year 2005 was reduced from \$3,754 to \$641. The petitioner filed a timely petition for redetermination. The petitioner was informed of his appeal rights. The Tax Commission, having reviewed the file, hereby issues its decision.

The TDB determined, based upon a federal Form W-2 and a review of the Commission's records, that the petitioner had withheld Idaho tax and had not remitted the Idaho tax to the Commission. In the NODD that was originally issued to the petitioner, since the TDB did not know the exact number of employees the petitioner employed during 2005, the TDB determined that the petitioner should have withheld \$2,500 of tax based upon a \$50,000 estimate of Idaho wages paid to employees. However, shortly thereafter, the TDB modified its NODD to reflect that Idaho withholdings should be \$428 not \$2,500, based upon the only actual federal Form W-2 that the Commission had obtained.

In the petitioner's petition for redetermination, the petitioner does not deny that the Idaho tax withheld information as shown on the federal Form W-2 was incorrect; instead, the petitioner argues that he is sure that he remitted the Idaho withholdings but was unable to locate his records

to prove that he did. He stated that he was “currently digging through boxes and boxes of paperwork to find the cancelled checks for this payment.”

Interest was included in the NODD in accordance with Idaho Code section 63-3045. A penalty was also included for failure to file an Idaho income tax return per Idaho Code Section 63-3046(c)(1). The penalty percentage is 5 percent per month with a maximum rate of 25 percent.

The petitioner did not respond to the letter providing him with his appeals options. 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 NODD prepared by the TDB for taxable year 2005 is incorrect, the Commission upholds the TDB’s determination as shown in the NODD.

WHEREFORE, the Notice of Deficiency Determination dated January 7, 2009, as modified by the TDB, 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>
2005	\$428	\$107	\$154	\$689

Interest has been updated and is calculated through November 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.

An explanation of the petitioner’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.
