



According to information provided [Redacted], the taxpayer and her husband did not file federal returns for taxable years 2005, 2006, and 2007. Under Idaho Code section 63-3031(c), if a husband and wife elect to file a joint return for federal purposes, they are required to file a joint return with the state of Idaho. The taxpayer and her husband did not file federal returns for the years at issue, thus they did not make the election to file jointly. The Commission cannot make the election for them; therefore, the Commission issued assessments using the filing status of Married, Filing Separate with the income and deductions divided equally between spouses according to Idaho's community property laws.

Some adjustments were made to the tax shown due in the Notice of Deficiency Determination after the taxpayer provided information to document Idaho withholding for taxable years 2006 and 2007. The Commission had initially received the W-2 income amounts for taxable years 2006 and 2007 but did not know how much, if any, Idaho income tax had been withheld for these years. The taxpayer was able to provide copies of his W-2s that showed the amount of Idaho income tax that had already been withheld.

After the taxpayer protested the Notice of Deficiency Determination, the Commission mailed a letter informing her and her husband of their right to a hearing. The taxpayer's husband responded with a letter dated April 8, 2010, requesting a telephone conference. The letter indicated a specific week and provided a work phone number to call. When the Commission called the phone number, the individual answering the phone said the taxpayer's husband no longer worked there. Two follow-up letters were sent to the taxpayer requesting that she contact the Commission if she wished to further discuss the case or if she wanted to file tax returns for the years at issue. The follow-up letters were dated June 2, 2010, and September 9, 2010. The last follow-up letter indicated that if the taxpayer failed to respond, the Commission would issue a decision based on the

information available. The taxpayer has not contacted the Commission since the letter requesting a telephone conference.

#### LAW AND ANALYSIS

Idaho Code section 63-3030 requires that every Idaho resident who is required to file a federal income tax return must also file an Idaho income tax return. Internal Revenue Code section 6012(a)(1) requires individuals to file an income tax return if their gross income is equal to or exceeds the amount set forth by the code. For a married individual, filing separately, that filing requirement amount was \$3,200 for 2005, \$3,300 for 2006, and \$3,400 for 2007.

The information gathered regarding the gross income of the taxpayer shows that he exceeded these amounts and, therefore, was required to file tax returns pursuant to Idaho Code section 63-3030.

The Commission is authorized to determine a deficiency of Idaho tax. Idaho Code section 63-3045(1)(a) states:

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.

Idaho Code section 63-3068(a) establishes a statute of limitations requiring a notice of deficiency to be “issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.” However, there is no statute of limitations when no return is filed. Idaho Code section 63-3068(d) states:

In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

The Commission has the authority to determine deficiencies of Idaho tax for the taxpayer for taxable years 2005, 2006, and 2007. Because the taxpayer and her husband did not file federal

returns with an election for joint filing status, the Commission issued assessments using the filing status of Married, Filing Separate with the income and deductions divided equally between spouses according to Idaho's community property laws. The original Notice of Deficiency Determination amount claimed due has been reduced because of the 2006 and 2007 Idaho income tax withholding information provided by the taxpayer.

CONCLUSION

WHEREFORE, the Notice of Deficiency Determination dated July 16, 2009, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (computed to April 8, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$ 431	\$108	\$ 69	\$ 608
2006	3,752	938	866	5,556
2005	372	93	109	<u>574</u>
			TOTAL DUE:	\$6,738

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 \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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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