

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22263
[Redacted])	
)	DECISION
Petitioner.)	
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On July 29, 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 1999 and 2001 through 2007 in the total amount of \$55,683. The petitioner was informed of his appeal rights. The Tax Commission, having reviewed the file, hereby issues its decision.

The TDB determined, based upon federal information and a review of the Commission's records, that the petitioner had an Idaho filing requirement for taxable years 1999 and 2001 through 2007. The TDB initiated contact with the petitioner requesting he file an Idaho income tax return or, in the alternative, explain why the petitioner would not have a filing requirement. The NODD issued to the petitioner was issued based upon married filing separately with a community property split of the total income identified by the TDB for the petitioner and his wife.

The TDB provided the petitioner with several extensions of time in which to file the requested returns. Since the petitioner did not provide the Idaho returns as requested or provide an explanation for not having an Idaho filing requirement, the TDB issued the NODD.

In the petitioner's petition for redetermination, the petitioner does not deny that he and his wife had an Idaho filing requirement; instead, the petitioner requested additional time to work with their accountant in preparing the delinquent returns.

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

In 2010, the petitioner and his wife filed an Idaho resident income tax return for taxable years 2001, 2002, and 2003. The Commission accepts the petitioner's late filed returns in lieu of the returns prepared on behalf of the petitioner as shown in the TDB's NODD dated July 29, 2009, for taxable years 2001, 2002, and 2003. The late filed returns for taxable years 2001, 2002, and 2003 are subject to the normal review and audit processes of the Commission.

Since the petitioner has not filed Idaho income tax returns for taxable years 1999, 2004, 2005, 2006, and 2007, the Commission sustains the TDB's calculation of the petitioner's Idaho tax liability as follows:

	1999	2004	2005	2006	2007
Wages	\$1,721	\$9,443	\$17,187	\$14,410	\$16,133
1099-Div	228	21	30	25	
1099-Int	274	280	44	1,038	
1099-S	320,000				
Capital gain deduction	-192,000				
1099-B	20,000			2,686	143
Federal Form 1120S K-1	-6,274	152,585	138,510	84,498	63,538
Remove ½ community income	-71,974	-81,164	-77,885	-51,329	-39,907
Subtotal	71,975	81,165	77,886	51,329	39,907
Standard deduction	-3,600	-4,850	-5,000	-5,150	-5,350
Personal exemption	-2,750	-3,100	-3,200	-3,300	-3,400
Idaho taxable income	\$65,625	\$73,215	\$69,686	\$42,879	\$31,157
Idaho Tax	\$5,129	\$5,426	\$5,143	\$3,042	\$2,118
Idaho withholdings	0	0	0	0	0
Grocery credit	-15	-20	-20	-20	-20
PBF tax	10	10	10	10	10
Amount of tax due	\$5,124	\$5,416	\$5,133	\$3,032	\$2,108

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 years 1999, 2004, 2005, 2006, and 2007 is incorrect, the Commission upholds the TDB's determination as shown in the NODD.

WHEREFORE, the Notice of Deficiency Determination dated July 29, 2009, is hereby MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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

Year	Tax	Penalty	Interest	Total
1999	\$5,124	\$1,281	\$3,483	\$9,888
2004	5,416	1,354	1,875	8,645
2005	5,133	1,283	1,467	7,883
2006	3,032	758	676	4,466
2007	2,108	527	323	2,958
Total Due				\$33,840

Interest has been updated and is calculated through January 31, 2011, 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 _____ 2011.

IDAHO STATE TAX COMMISSION

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.
