

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 23500  
Petitioner. ) DECISION  
\_\_\_\_\_ )

[Redacted] (petitioner) protested the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated August 30, 2010, asserting additional Idaho income tax for taxable years 2006, 2007, and 2008 in the total amount of \$11,461.

The issues in this docket are whether the Commission had authority to determine there were deficiencies of tax for taxable years 2006, 2007, and 2008 and whether petitioner was required to file Idaho income tax returns for those years.

**BACKGROUND FACTS**

Petitioner failed to file Idaho individual income tax returns for taxable years 2006, 2007, and 2008. The Commission sent letters notifying her of the missing returns. When there was no response to these letters, the Tax Discovery Bureau (Bureau) obtained income information [Redacted] as well as homeowner and voter information. For taxable year 2006 the [Redacted] filed a substitute [Redacted] income tax return for petitioner showing an Adjusted Gross Income of \$64,148. For taxable year 2007, two W-2 forms and one 1099 form showed a total of \$46,212 of income for petitioner. For taxable year 2008 two W-2 forms and one 1099 form showed a total of \$44,005 of income for petitioner. [Redacted] the Bureau issued a Notice of Deficiency Determination (NODD) for taxable years 2006 through 2008.

The Commission mailed the NODD by Certified Mail on August 30, 2010. It was returned to the Commission by the United States Postal Service stamped “Unclaimed.” As a courtesy, the Commission then sent a non-certified letter containing the NODD to give petitioner an opportunity to review the NODD and to preserve her appeal rights.

On October 28, 2010, a packet was delivered to the Commission labeled “Restricted Delivery.” Restricted Delivery is an option available with the United States Post Office to ensure that mail is delivered only to the person specified, or to the person authorized in writing to sign for intended recipient. The packet was addressed to the current and former auditors that had sent correspondence to petitioner. In this packet, petitioner had returned the letter, the NODD, and included a signed statement which read, in part, “The presentment dated 23 September 2010 is refused without dishonor.” Petitioner also included a “Notification of reservation of rights UCC 1-308/1-207” document which appears to have been filed with [Redacted] County Court Clerk on October 20, 2010. Petitioner concluded this signed statement with the following paragraph:

I reserve my right not to be compelled to perform under any contract or commercial agreement that I did not enter knowingly, voluntarily and intentionally. And furthermore, I do not accept the liability of the compelled benefit of any unrevealed contract or commercial agreement.

On December 21, 2010, the Commission mailed petitioner a letter via Certified Mail informing her of her right to an informal hearing. On January 13, 2011, the Commission received an envelope that did not list a return address of the sender but rather had the Commission’s name and address in both the “From” and “To” lines. The envelope contained the letter that had been mailed to petitioner informing her of her rights to an informal hearing. A cover sheet was included that did not have a signature or a name of the sender. The cover sheet the following, in full:

3RD PARTY AFFIDAVIT OF MAILING 7004 1350 0003 4139 2288

These enclosed documents were inadvertently received and opened by mistake. These enclosed 2 page which appear to be a form letter dated December 21, 2010 are not understandable or acknowledgeable or recognizable under the penalty of False Personation must be returned.

The enclosure herein contains the aforementioned and misdirected documents; as there is not enough information or knowledge disclosed to form a responsive answer, said documents are being returned forthwith.

This is the second non-filer case for petitioner. A previous audit for non-filed returns for taxable years 1998 through 2005 was closed and the tax was assessed because a protest was not received.

#### 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. Section 6012(a)(1) of the Internal Revenue Code 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 couple, under 65 years old, filing jointly, that filing requirement amount was \$16,900 for 2006, \$17,500 for 2007, and \$17,900 for 2008.

The information gathered regarding the gross income of petitioner shows that she 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 was 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 petitioner for taxable years 2006, 2007, and 2008. Petitioner was required to file Idaho tax returns and pay taxes on her income for taxable years 2006, 2007, and 2008.

#### CONCLUSION

WHEREFORE, the Notice of Deficiency Determination dated August 30, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that petitioner pay the following tax, penalty, and interest (computed to May 3, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$3,964	\$ 991	\$ 393	\$ 5,348
2007	2,600	650	424	3,674
2006	1,765	441	412	<u>2,618</u>
			TOTAL DUE:	<u>\$11,640</u>

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

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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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