

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

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 24136 |
| [Redacted],                     | ) |                  |
|                                 | ) |                  |
| Petitioner.                     | ) | DECISION         |
| _____                           | ) |                  |

On October 6, 2010, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable years 2003 through 2005 in the total amount of \$30,894.

The taxpayer filed a timely protest. He did not submit additional information or request an informal conference. The Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

The taxpayer and his wife failed to file their 2003 through 2005 individual income tax returns. Because Commission records showed the taxpayer met the state income tax filing requirements and had not filed her Idaho income tax returns for taxable years 2003 through 2005, the Bureau attempted to contact her for clarification. The taxpayer did not respond.

The Bureau requested and received income information from [Redacted] in accordance with Internal Revenue Code § 6103(d) and Idaho Code § 63-3077. Those records indicated that the taxpayer's income for taxable years 2003 through 2005 exceeded the filing requirements of Idaho Code § 63-3030.

Idaho Code § 63-3045(1)(a) states:

**63-3045. Notice of redetermination or deficiency -- Interest.** (1) (a) 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 by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

The Commission issued an NODD to the taxpayer and his wife on October 6, 2010, based on the income information obtained from [Redacted] and that found in Commission records. The taxpayer protested the Bureau's determination stating that he was also dealing with [Redacted] and would be filing actual returns claiming a filing status of Married, filing joint with all the deductions he is entitled to.

The Bureau sent the taxpayer a letter to acknowledge his protest. He was allowed a continuance. However, when the returns did not arrive as promised, his file was transferred to the Legal/Tax Policy Division of the Commission for administrative review.

The taxpayer did not respond to a letter advising him of his appeal rights. A follow-up letter was also sent by the policy specialist but no response was received. To date, the Commission has not received the taxpayer's 2003 through 2005 Idaho individual income tax returns or any additional information. The Commission, believing the taxpayer has had more than an adequate amount of time to prepare and submit his income tax returns, decided this matter based on the information available.

The Idaho resident individual income tax returns the Bureau prepared on behalf of the taxpayer was based on income information gleaned from the taxpayer's [Redacted] income records and the records retained by the Commission. According to [Redacted], neither the taxpayer nor his spouse filed [Redacted] income tax returns for taxable years 2003 through 2005. If a husband and wife elect to file a joint return for federal purposes, they are required to file a

joint return for state purposes. The taxpayer did not make the election to file a married filing joint return with his wife for taxable years 2003 through 2005 and the Commission will not make the decision for him. Therefore, for all years shown on the NODD, the assessment issued by the Commission must use the filing status of Married, filing separate with income and deductions equally divided between the spouses according to Idaho's community property laws.

Commission information shows the taxpayer registered a business, [Redacted], with the Secretary of State on October 30, 2001; reported sales and paid sales and use tax until the Withholding and Sales and Use Tax Permits were cancelled in September and December 2005, respectively.

For taxable years 2003 and 2004, Sales and Use tax reports submitted by the taxpayer, along with W-2s and 1099s issued to the taxpayer, were used by the Bureau to estimate the income and the resulting tax due.

For taxable year 2005, the Bureau determined the taxpayer's Idaho income tax liability based on W-2 and 1099 information along with the gross proceeds from the sale of property reported to the taxpayer on Form 1099S. Based on the taxpayer's address history with the Commission, the Bureau determined the sale of property was not the taxpayer's primary residence and, therefore, not subject to the federal exclusion. However, the Bureau did allow the taxpayer a credit for the capital gains deduction of 60 percent of the net income from the sale of the property.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayer did not meet his burden. The taxpayer stated that the Bureau did not account for

the expenses incurred. However, it is the taxpayer's responsibility and the burden rests upon him to disclose his receipts and claim his proper deductions. United States v. Ballard, 535 F.2d 400 (1976). The Commission recognizes that the taxpayer may have had business expenses to offset his income; yet, if the taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed, and the taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931). Since the taxpayer failed to meet this burden, the Commission finds the adjusted gross income amounts for taxable years 2003 through 2005 prepared by the Bureau is a reasonable representation of the taxpayer's Idaho adjusted gross income based upon the information available.

The interest and penalty added by the Bureau pursuant to Idaho Code §§ 63-3045 and 63-3046 was reviewed and found to be proper and in accordance with Idaho Code.

THEREFORE, the NODD dated October 6, 2010, and directed to [Redacted] is hereby APPROVED and MADE FINAL.

IT IS ORDERED that the taxpayer pays the following tax, penalty, and interest:

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u>    |
|-------------|------------|----------------|-----------------|-----------------|
| 2003        | \$6,033    | \$1,508        | \$2,809         | \$10,350        |
| 2004        | 8,680      | 2,170          | 3,522           | 14,372          |
| 2005        | 4,769      | 1,192          | 1,647           | <u>7,608</u>    |
|             |            |                | TOTAL DUE       | <u>\$32,330</u> |

Interest is calculated through July 27, 2012.

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 \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.