

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24666
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

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 2005 through 2008, in the total amount of \$2,767. The petitioner filed a timely protest and petition for redetermination (petition). The petitioner was informed of his appeal rights. The petitioner did not request an informal hearing, or provide any additional information subsequent to the issuance of the Commission’s hearing rights letter. The Commission, having reviewed the file, hereby issues its decision.

Based upon information available to the Commission, the TDB determined that the petitioner had an Idaho filing requirement for taxable years 2005 through 2008. The TDB initiated contact with the petitioner in early 2011, requesting that he file Idaho income tax returns for taxable years 2005 through 2008.

Since the petitioner did not file an Idaho income tax return for taxable years 2005 through 2008, TDB issued the NODD on October 27, 2011. The calculation of the petitioner’s Idaho taxable income was based mainly upon information that the TDB had acquired from another taxing agency as shown in Exhibit A, attached to and made part of this decision. In addition to the amount of Idaho income tax sought by the TDB as shown in Exhibit A, the TDB did allow the section 63-3024A, Idaho Code, grocery credit and is seeking interest and penalty. The interest asserted in the NODD was asserted in accordance with section 63-3045(6), Idaho Code.

Penalty asserted in the NODD was asserted for failure to file an Idaho income tax return in accordance with section 63-3046(c), Idaho Code.

In the TDB's calculation of the petitioner's Idaho taxable income, the TDB treated the petitioner as single for taxable years 2005 and 2006, allowing one personal exemption and the standard deduction amount for a single taxpayer. For taxable years 2007 and 2008, the TDB calculated the petitioner's Idaho taxable income using married filing separately status, allowing one personal exemption and the standard deduction for married filing separately.

The petitioner does not dispute that he has an Idaho filing requirement for taxable years 2005 through 2008; rather he provided the following arguments:

I am writing this letter to you today to discuss this tax deficiency determination that your department sent to me. I want to make it clear that I certainly do not claim to know the tax laws of this state, nor do I claim to be an expert with some laws applicable to this situation. However, I wish to discuss a few things with you in this letter that I have researched and see if any of this information is applicable to this case at all. I am certainly not attempting to dodge any responsibility in this matter, but trying to bring up information that may or may not apply to this case.

My first concern would be that according to the laws in the State of Idaho, your department is basically trying to "audit" me because of a deficiency in tax filings that may not have been filed. Your department is attempting to have me agree or disagree with tax figures that your department says I should owe to the State by using the wrong exemptions and filing status. Now, as I said, I am not a legal wizard here, but I am aware that your department is attempting to make this determination well past the statute of limitations in which a civil matter such as this can be commenced.

Your own determination letter stated very plainly **"The Tax Commission sent you a letter on 3/10/2011 requesting your filing information. To date we haven't received a response."** The mere fact that your department initiated this action well past the time period in which to initiate any such actions is a violation of the statute of limitations according to the laws of this state.

Your department is asking me to provide records that are no longer in existence or in my possession to try and prove why I think this determination is wrong. Then I am expected to try to produce records that would necessitate trying to contact former employers for duplicate W-2's and other such forms that cannot

reasonably be secured within your 63 day period for contesting this determination process.

In an attempt to expedite this process, I would ask that your department please reconsider the statistics you used to make your determinations on amounts allegedly owed by using the standard deductions based upon the following:

1. **FILING STATUS** Single, filing separate return, 2. **EXEMPTIONS** myself & spouse

In attempting to fill out forms from these years, I have noticed that I did not owe any taxes to the State for the inclusive years of this determination process, but since I don't have the necessary W-2 forms and such, all my determinations are being made from the financial figures listed in your determination letter.

Since I am unable to accurately fill out any amended forms within the set time limit to contest this action by your department, I would hereby request that your department complete a new determination based upon the **correct** filing status and **exemption** status information I have shown previously.

I am also curious as to why you would make the determination for 2005-2006 as single with one (1) exemption, and then make 2007 & 2008 as married, filing separate with one (1) deduction, as these figures would make a distinct difference as to taxes owed or not owed in this matter.

The TDB in its letter dated December 30, 2011, acknowledged the petitioner's petition for redetermination and noted that

- For taxable years 2007 and 2008, the same married filing separate status that was used on the petitioner's [Redacted] income tax return filed with the [Redacted] was used for purposes of the Idaho NODD.
- For taxable years 2005 and 2006, since the petitioner had not filed a [Redacted] income tax return, the TDB used a single filing status in its NODD.
- For taxable year 2006, the TDB modified its NODD to allow \$66 of additional Idaho withholdings.
- The TDB's intention was to complete the petitioner's redetermination within the TDB unless unable to reach a mutually acceptable agreement on the resolution of

the issues involved, the file would be transferred to the Commission's legal department.

The TDB sent a couple of additional letters attempting to secure the requested Idaho income tax returns. On April 23, 2012, after receiving a request from the taxpayer for additional time to obtain the necessary information to prepare his Idaho income tax returns, the TDB granted the petitioner until May 24, 2012, in which to file his 2005 through 2008 Idaho tax returns.

On May 23, 2012, the Commission received an Idaho income tax return from the petitioner for taxable years 2005, 2006, 2007, and 2008. The petitioner had checked the "married filing separately status" box for each of these years, and had claimed a personal exemption for himself and his wife. The TDB reviewed the submissions and on May 24, 2012, sent a letter to the petitioner stating:

We received your 2005-2008 Idaho individual income tax returns and find that they cannot be accepted for the following reasons:

1. The Idaho income tax withheld for each year needs to be substantiated by providing W-2's to support the amount claimed on each income tax return.
2. An exemption cannot be claimed for a spouse when the filing status is "Married filing separate"

Please revise your 2005-2008 Idaho individual tax returns by correcting your number of exemptions claimed to "one", and by providing W-2's to support the withholding amounts listed on each tax return. Please submit this information, along with your 2005-2008 [Redacted] income tax returns, to my attention no later than June 25, 2012.

Idaho Income Tax Administrative Rule 800 (Rule 800) sets forth the requirements for a valid Idaho income tax return.<sup>1</sup> Rule 800 provides:

800.VALID INCOME TAX RETURNS (RULE 800).  
Section 63-3030, Idaho Code. (3-20-97)

01. Requirements of a Valid Income Tax Return. In addition to the requirements set forth in IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 150, an income tax return shall meet the requirements set forth in this rule. **Those that fail to meet these requirements are invalid.** They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income tax return is considered to have filed no return. (3-15-02)

02. Copy of Federal Return Required. A taxpayer shall include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments. (4-2-08)

03. **Verification of Idaho Income Tax Withheld.** A taxpayer who files an Idaho individual income tax return that is submitted on paper and reports Idaho income tax withheld shall attach appropriate Forms W-2 and 1099 and other information forms that verify the amount of the Idaho income tax withheld and claimed on the Idaho income tax return. Returns filed electronically shall include the W-2 and 1099 information in the electronic record transmitted. (5-8-09)

Emphasis added.

Although the TDB did not return the petitioner's Idaho filings to the petitioner or cite Rule 800 as authority, Rule 800 does provide the basis for TDB's rejection of the returns as not meeting Idaho's requirements for a valid Idaho income tax return since the petitioner had failed to substantiate his Idaho withholdings. The TDB could have also invalidated the Idaho filings on the basis that the petitioner failed to include a complete copy of his federal income tax return with his Idaho filings.

As for the petitioner's claim that the NODD included taxable years that the Idaho statute of limitations had expired on, Idaho law provides:

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<sup>1</sup> IDAPA 35.01.800.

63-3068. PERIOD OF LIMITATIONS FOR ISSUING A NOTICE OF DEFICIENCY AND COLLECTION OF TAX. (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall 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.

...

(o) For the purposes of this section, “return” includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

Since the petitioner did not file an Idaho income tax return for taxable years 2005 through 2008, the TDB was correct in that the Idaho statute of limitations contained within section 63-3068(a) did not begin to run nor had it expired at the time that the TDB issued its NODD on taxable years 2005 through 2008.

The petitioner did not respond to the TDB’s May 24, 2012, letter; thus, on September 6, 2012, the petitioner’s petition for redetermination was referred to tax policy for administrative review. The petitioner was subsequently informed of his appeals right by Policy.

The petitioner has not, as of the date of this decision, provided Policy with any additional information or requested an informal hearing. 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, the Commission upholds the TDB’s determination.

THEREFORE, the NODD dated October 27, 2011, and as modified by TDB, and directed to the petitioner is hereby AFFIRMED by this decision.

IT IS ORDERED that the petitioner pay the following amount of tax, penalty, and interest:

<b>Year</b>	<b>Tax</b>	<b>Penalty</b>	<b>Interest</b>	<b>Total</b>
2005	\$521	130	202	853
2006	627	157	204	988
2007	430	108	110	648
2008	197	49	38	284
			<b>Total Due</b>	<b><u>\$2,773</u></b>

Interest is calculated through November 15, 2013, and will continue to accrue at the rate set forth in section 63-3045, Idaho Code.

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 \_\_\_\_\_ 2013.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2013, 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.  
  
\_\_\_\_\_

**EXHIBIT A**

<b>Description</b>	<b>Source</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
[Redacted]	W-2	\$0	\$0	\$3,162	\$0
[Redacted]	W-2			331	2,282
[Redacted]	W-2			199	6,624
[Redacted]					2
[Redacted]	[Redacted]	0	0	3,692	8,908
[Redacted]	W-2	19,284	4,518		
[Redacted]	W-2		13,269	14,407	
[Redacted]	W-2		335		
[Redacted]	W-2		2,912		
[Redacted]	W-2			1,356	
[Redacted]	W-2				819
[Redacted]	W-2				2,247
[Redacted]	W-2				1,703
[Redacted]	1099-G				2,575
Subtotal		19,284	21,034	19,455	16,252
Standard deduction		-5,000	-5,150	-5,350	-5,450
Personal exemption		-3,200	-3,300	-3,400	-3,500
Federal taxable income as calculated by TDB		11,084	12,584	10,705	7,302
Adjustments in arriving at Idaho taxable income:					
Idaho taxable income per NODD		<u>\$11,084</u>	<u>\$12,584</u>	<u>\$10,705</u>	<u>\$7,302</u>
Idaho tax liability		\$620	\$725	\$579	\$328
Withholdings	W-2	-89	-88	-139	-111
Permanent Building Fund tax		10	10	10	10
Grocery credit		-20	-20	-20	-30
Amount of tax due per NODD (as modified)		<u>\$521</u>	<u>\$627</u>	<u>\$430</u>	<u>\$197</u>

