

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25205
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

A Notice of Deficiency Determination (NODD) was issued to [Redacted] (petitioner) seeking additional individual income tax, penalty, and interest, in the amount of \$13,489 concerning taxable years ending December 31, 2001, 2002, 2003, 2005, 2006, and 2009. A Tax Enforcement Specialist (Auditor) from the Idaho State Tax Commission’s (Commission) Tax Discovery Bureau (TDB) issued the NODD. The NODD was subsequently modified with the removal of taxable years 2001, 2006, and 2009, leaving just taxable years ending 2002, 2003, and 2005, in dispute.

The petitioner filed a timely 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.

From August through October 2011, the auditor sent several letters to the petitioner in an attempt to secure from the petitioner, his delinquent Idaho income tax returns for 2001 through 2009. During that same period, the petitioner responded that he had found W-2’s for 2001, 2002, and 2009; however he did not work in 2007 and 2008 due to being incarcerated. Additionally, the petitioner requested the Commission provide him with tax forms and related instructions, as well as requesting additional time, since he will be meeting with a tax preparer to assist him with the filing of his Idaho income tax returns. The auditor provided the requested forms and granted

the additional time in which to provide the delinquent Idaho returns. In late November 2011, the petitioner requested a two week extension of time to file his delinquent Idaho returns, which the auditor granted.

Since the petitioner had not provided the auditor with his Idaho income tax returns, on December 30, 2011, the auditor issued the NODD. The NODD was issued based upon information available to the auditor, including information obtained from the [Redacted]. Interest was asserted in accordance with section 63-3045(6), Idaho Code. Penalty was asserted for failure to file an Idaho income tax return in accordance with section 63-3046(c), Idaho Code.

The petitioner's representative filed a timely petition indicating that the auditor did not have all of the amounts necessary to correctly calculate the petitioner's Idaho taxable income for the taxable years in dispute. The petition was accompanied by an Idaho Power of Attorney signed on November 29, 2011, identifying an individual in [Redacted], Idaho, as the petitioner's representative for this tax matter. The representative requested that the petitioner be given more time to complete the requested returns as the petitioner will be incarcerated until the end of March 2012. The auditor granted the additional time.

In April through May 2012, the petitioner filed an Idaho income tax return for taxable years 2001, 2004, 2006, 2007, 2008, and 2009. Additionally, the representative sent the auditor an e-mail in which she stated that she had met with the petitioner and that she still had concerns with tax years 2002 and 2003. Her concerns with tax years 2002 and 2003, related to the inability to find W-2's for those years from the petitioner's employer. The [Redacted] information reflected large [Redacted] withholdings and a prior W-2 that had Idaho withholdings; however, she was unable to locate the former owners of the now defunct business to confirm what, if any, Idaho withholdings were for 2002 and 2003.

As a result of the petitioner filing his Idaho income tax returns for some of the taxable years in dispute, the auditor vacated that portion of the NODD for taxable years 2001, 2006, and 2009, and accepted the petitioners' actual returns in lieu of the figures as reported in the NODD for those specific taxable years. Taxable years 2004, 2007, and 2008, were never included within the NODD as issued. The taxable years still in dispute that make up the remaining portion of the NODD are taxable years 2002, 2003, and 2005.

After receiving no response from the petitioner or his appointed representative, or the delinquent Idaho individual income tax returns for taxable years 2002, 2003, and 2005, in September 2012, the file was transferred into the Commission's informal administrative appeals process and assigned to Tax Policy for resolution.

A hearing rights letter was sent to the petitioner's representative on November 26, 2012. A follow-up letter was sent to the petitioner's representative and to the petitioner on August 12, 2012, requesting that the Commission be informed of the status of the 2002, 2003, and 2005, Idaho income tax returns.

As of the date of this decision, the petitioner has not provided the requested delinquent Idaho income tax returns or provided information that would support a finding in favor of the petitioner. 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 with respect to taxable years 2002, 2003, and 2005.

THEREFORE, the NODD dated December 30, 2011, 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
2002	\$1,150	\$288	\$654	\$2,092
2003	\$1,312	328	677	2,317
2005	\$1,578	395	625	<u>2,598</u>
				<u>\$7,007</u>

Interest is calculated through January 31, 2014, 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.  
  
\_\_\_\_\_