

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25325
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	
	)	
_____	)	

The Idaho State Tax Commission’s (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] (petitioners) proposing additional income tax, penalty, and interest for taxable year 2006, in the total amount of \$903. For purposes of this decision, [Redacted] and [Redacted] shall be referred to as petitioner-F and petitioner-M, respectively.

Petitioner-F filed a timely petition for redetermination (petition) which was treated as the filing of a timely petition for both petitioners. The petitioners were informed of their appeal rights. Neither petitioners requested an informal hearing, or provided any additional information subsequent to the issuance of the Commission’s hearing rights letter. The Commission, having reviewed the file, hereby issues its decision.

After reviewing the petitioners’ filing history with Idaho and their filing history with the [Redacted] ([Redacted]), the TDB determined that the petitioners had a requirement to file an Idaho income tax return for taxable year 2006 and had failed to do so.

On January 26, 2011, the TDB sent the petitioners a letter informing them that the Commission had not received their 2006 Idaho income tax return. The TDB sent the letter addressed to the petitioners, but mailed the letter to two different Idaho addresses, with one of the addresses belonging to petitioner-F and the other to petitioner-M.

On February 16, 2011, petitioner-F responded that she no longer lived with petitioner-M, and that for taxable year 2006 she was not required to file due to lack of work.

The TDB responded to petitioner-F that the records obtained from the [Redacted] showed that she had filed a federal income tax return with petitioner-M as married filing jointly. Since the petitioners filed married filing joint returns with the [Redacted] as husband and wife, under section 63-3031, Idaho Code, she and petitioner-M were required to file an Idaho return jointly and that the petitioners were joint and severally liable for any tax liability.

Since the petitioners did not file the requested Idaho return, on June 18, 2012, the TDB issued its NODD seeking additional tax, interest, and penalty. The NODD was issued in the petitioners' names and sent via certified mail to petitioner-F's address and to petitioner-M's address. 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.

In response, petitioner-F filed a petition for redetermination wherein she made several arguments for why she was not liable for the amount shown in the NODD. Some of the arguments she presented were:

- 1- I was never married to petitioner-M. I only resided with him at his address.
- 2- During 2004 through 2005 income tax year, I did not work or have any income filed; petitioner-M's wages were the primary source of income.
- 3- I never signed the 2004 through 2006 income tax returns filed with the IRS or the state of Idaho.
- 4- Petitioner-M informed me, that I was a dependent on his tax forms, not a spouse.
- 5- For 2004 through 2006, I have had no claimed income that would result in a state or federal income tax.
- 6- I have not resided at petitioner-M's address since December 2006.

Additionally, she argued that she should “be cleared from any income given to solely [petitioner-M] because it’s obviously his address-his debt- his 2006 income tax- not mine.”

In reviewing the audit file, the only income reported solely under petitioner-F’s name relates to gambling winnings at [Redacted] casino totaling \$5,467. This amount was reported to the [Redacted] government on a Form W-2G. Other than that, except for a small amount of interest income paid by the [Redacted] government to the petitioners, the remainder of the income included within the NODD was reported under petitioner-M’s name.

In viewing petitioner-F’s claim that she was never married to petitioner-M, the TDB could not find any information to either confirm or deny her claim other than 1) the married filing joint returns filed with the [Redacted] for taxable years 2004 through 2006, and 2) the married filing joint returns filed with Idaho for taxable years 2004 and 2005. The aforementioned returns reflect petitioner-F and petitioner-M as husband and wife, with petitioner-F and petitioner-M using different last names on the [Redacted] returns. The “[Redacted]” last name was used by petitioner-M on all of the returns filed for 2004 through 2006. The “[Redacted]” name was used as petitioner-F’s last name on the aforementioned [Redacted] and Idaho returns as filed. The TDB did note that

- According to public records maintained by the Idaho repository:
  - Petitioner-F and [Redacted] were divorced in 2003. Thus, the petitioner-F’s use of “[Redacted]” within her name stems from her marriage to [Redacted].
  - Petitioner-F and [Redacted] were divorced in 2011. The petitioner-F used “[Redacted]” as her last name upon the filing of her petition. It appears

that petitioner-F and [Redacted] were married post-2006, with the marriage most likely having occurred in 2008.

- o No records exist within the Idaho repository indicating that petitioner-F and petitioner-M were ever married or subsequently divorced between petitioner-F's marriages to "[Redacted]" and "[Redacted]."

In reviewing other information available to the Commission, the TDB could not identify any other document wherein petitioner-F used petitioner-M's last name or was listed on the same document as petitioner-M so as to lead one to believe that the two were married. The only records showing the two as husband and wife were the aforementioned Idaho and [Redacted] income tax returns.

The TDB requested that petitioner-F clear up the filings with the [Redacted] and then provide the TDB with her correspondence to and from the [Redacted]. Petitioner-F did not provide the TDB with any such correspondence. As such, the file was transferred into the Commission's administrative appeals process and assigned to Tax Policy for resolution.

Petitioner-F has not responded to the hearing rights letter nor provided the Commission with any additional evidence beyond her statements in her protest in support of her claim that the [Redacted] and state income tax returns were filed using an incorrect filing status. Although it is unclear if petitioner-F and petitioner-M were married or not, the fact remains that a [Redacted] income tax return was filed with the [Redacted] for 2004 through 2006, and with Idaho for taxable years 2004 and 2005, reflecting a married filing joint status. That fact, when coupled with the petitioners' failure to respond to the Commission's hearing rights letter, leaves the Commission with little choice. Accordingly, the Commission upholds the TDB's use of a

married filing jointly status for taxable year 2006, as well as the TDB's finding that both of the petitioners are liable for the proposed liability pursuant to section 63-3031, Idaho Code.

It is the petitioners' 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 petitioners have not met this burden of proof, the Commission upholds the TDB's determination relating to taxable year 2006.

THEREFORE, the NODD dated June 18, 2012, and directed to the petitioners is hereby AFFIRMED by this decision.

IT IS ORDERED that the petitioners 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>
2008	\$588	\$147	\$196	\$931

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 petitioners' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

IDAHO STATE TAX COMMISSION

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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.

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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.

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