

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25328
[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 year 2009 in the total amount of \$166. The petitioner filed a timely petition for redetermination (petition). The petitioner was informed of his appeal rights in the Commission hearing rights letter; however, the petitioner has not responded to the Commission’s hearing rights letter. Therefore, the Commission, having reviewed the file, hereby issues its decision.

On November 25, 2011, the Commission received correspondence from the petitioner requesting a payment arrangement. Included with the petitioner’s request was an unsigned [Redacted] Form 5564 Notice of Deficiency – Waiver showing an increase in the petitioner’s [Redacted]tax for taxable year 2009, in the amount of \$1,815. The petitioner requested that he be allowed to make a payment arrangement to pay thirty dollars per month at the end of each month, starting in December 2012, in order to satisfy an amount owed of \$1,896.06, which appears to be the amount shown as an increase in tax on the [Redacted] form 5564 plus interest. It is unclear if the petitioner accidently sent the form to the Commission, or if he was simply informing the Commission of an increase in his [Redacted] income tax liability.

The petitioner's request was provided to the TDB for review, and on November 30, 2011, the TDB returned the correspondence to the petitioner stating that:

This form is being returned to you. We do not have any open items for the year in question; however, income and expense amounts on your Idaho return must match the amounts on your [Redacted] return. If the [Redacted] has adjusted your return, Idaho law requires you to notify the Idaho State Tax Commission of changes to your return within 60 days of the final [Redacted] determination. You can provide a copy of the final [Redacted] determination to the Idaho State Tax Commission or an amended return.

Since the petitioner did not provide a copy of his final [Redacted] determination, or file an amended Idaho income tax return for taxable year 2009, on January 30, 2012, the TDB sent to the petitioner a billing letter seeking a payment of \$166 (\$144 tax, \$10 penalty, and \$12 interest). In the explanation attached to the billing letter, the TDB explained that the additional Idaho income tax was due to the \$1,858 increase in the petitioner's [Redacted] adjusted gross income which in turn resulted in a corresponding \$1,858 increase to the petitioner's Idaho taxable income. The \$1,858 [Redacted] adjustment increasing the petitioner's [Redacted] taxable income was due to adjustments made in 2011 by the [Redacted] to include unreported income. However, it is unclear exactly what caused the petitioner's [Redacted] adjusted income to be increased by \$1,858. It appears from looking at the information obtained from [Redacted] that the additional 2009 [Redacted] increase in tax was offset by the petitioner's 2010 [Redacted] refund.

Since the petitioner did not timely report the change in his [Redacted] taxable income to Idaho, a five percent penalty, minimum of \$10, was included in the billing letter, as was additional interest on the underpayment of the petitioner's Idaho income tax liability.

The billing letter was followed up with the issuance of the NODD on March 16, 2012, seeking a total of \$166 (\$143 tax, \$10 penalty, and \$13 interest). Penalty for failure to timely

report adjustments to his [Redacted]tax liability, was asserted pursuant to Idaho Income Tax Administrative Rule 890.03, and subsections (a) and (f) of section 63-3046, Idaho Code. Interest was asserted in accordance with section 63-3045(6), Idaho Code.

The petitioner responded to the NODD with the filing of his amended Idaho income tax return, which was received by the Commission on April 2, 2012. The petitioner attached a copy of a [Redacted] form 1040X signed by his preparer, but not by the petitioner.

A review of the amended Idaho return reflects that the petitioner did not include within his amended return the \$1,858 increase in his [Redacted] adjusted gross income as previously discussed; instead, the petitioner filed the amended return to reclassify employee business expenses, totaling \$3,181, from [Redacted] Form Schedule A to [Redacted] Form 1040, page 1, line 24, as reservist business expenses. The impact of reporting these expenses as a deduction in arriving at [Redacted] adjusted gross income, is that the expenses would not be subject to the two percent limitation on miscellaneous itemized deductions. Of the \$3,181 in expenses originally reported on [Redacted] Schedule A, as miscellaneous employee business expenses, the petitioner, after applying a two percent of [Redacted] adjusted gross income limitation, was only allowed a deduction of \$1,974. Basically, the petitioner is taking the position that he is entitled to claim the entire amount in arriving at his [Redacted] taxable income and Idaho taxable income.

In addition to reclassifying the reservist business expenses, the petitioner claimed, on Idaho Form 39R Idaho Supplemental Schedule, a deduction for “Alternative energy devices” in the amount of \$7,700 for insulation added to an Idaho home that was in existence prior to 1976. At the [Redacted] level, the petitioner had claimed the \$7,700 of expenses on his [Redacted] income tax return as qualifying for the [Redacted] residential energy efficient property credit for

a total credit of \$1,500; however, the petitioner did not take an alternative energy devices deduction for these expenses when he originally filed his Idaho income tax return.¹ As a result of the reclassification of the reservist's expenses, and the deduction for the Idaho alternative energy devices, the petitioner is claiming that he is owed a refund of Idaho income tax in the amount of \$667, plus interest.

The TDB, in correspondence dated April 10, 2012, notified the petitioner that the TDB would treat the petitioner's amended return as a timely petition for redetermination. Additionally, the TDB requested that the petitioner provide his supporting documentation for the insulation deduction claimed on Idaho Form 39, and noted that the TDB was waiting for the records of the [Redacted] to be adjusted to reflect the changes made to the petitioner's [Redacted] adjusted gross income, as reflected in the amended return provided to the Commission by the petitioner.

In July and October of 2012, the TDB sent additional correspondence seeking the previously requested documentation for the alternative energy devices, or to notify the petitioner that the TDB was still waiting for the [Redacted] to adjust his [Redacted] adjusted gross income, to agree with the amount shown in the petitioner's amended return. Additionally in its October 2012 correspondence, the TDB informed the petitioner that it had not accepted the petitioner's amended Idaho taxable income tax return, and that his petition will be transferred to the legal department for review. The TDB does note in its audit file that an amended return appears to have been filed with the [Redacted] in April 2012; however, it has not resulted in a change in the amount of the petitioner's [Redacted] adjusted gross income which remained at \$62,194.

¹¹ The additional increase in the petitioner's [Redacted] adjusted gross income for taxable year 2009 by the [Redacted] in 2011 totaling \$1,858 would not have result in a corresponding increase in the petitioner's [Redacted] tax liability of \$1,815. However, the Commission cannot determine from the record if the [Redacted] disallowed the alternative energy devices credit, another credit, or exactly what adjustment accounts for the discrepancy.

The difference between what was originally reported, reported in the aforementioned amended return, and relied upon by the TDB in its NODD, is reflected in Table 1 as follows:

TABLE 1	(A) Originally Filed	(B) Amended	(C) TDB NODD
Wages	\$59,789	\$59,789	\$59,789
Taxable state refunds	330	330	330
[Redacted] Sch. E	900	900	900
Student loan interest deduction	-683	-683	-683
Reservists expenses		-3,181	
Adjustment by [Redacted] records			1,858
[Redacted] Adjusted Gross Income	60,336	57,155	62,194
Itemized deductions	-14,426	-12,452	-14,426
Personal exemptions	-3,650	-3,650	-3,650
[Redacted] taxable income	42,260	41,053	44,118
State adjustments:			
Itemized deductions- state tax addback	3,337	3,337	3,337
State income tax refund	-330	-330	-330
Child/dependent care	-1,014	-1,014	-1,014
Idaho Taxable Income	<u>\$44,253</u>	<u>\$43,046</u>	<u>\$46,111</u>

In summary, the TDB has not accepted the petitioner's amended return, and instead treated the amended return as a timely file protest, picked up the [Redacted] adjustment to the petitioners [Redacted] adjusted gross income, not allowed the petitioner to reclassify his employee expenses as reservist expenses, and not allowed the petitioner to claim a \$7,700, section 63-3022C, Idaho Code, alternative energy device deduction.

As of the date of this decision, the petitioner has not provided the documentation to support the \$7,700 alternative energy device deduction, nor any other information that would resolve this case in the petitioner's favor for taxable year 2009. 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 Commission, 110 Idaho 572, 574 (Ct. App. 1986).

Since the petitioner has not met this burden of proof showing that the NODD prepared by the TDB is incorrect, the Commission upholds the TDB's determination for taxable year 2009.

THEREFORE, the NODD dated March 16, 2012, and directed to petitioner, is AFFIRMED and MADE FINAL.

IT IS ORDERED, and THIS DOES ORDER, that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$143	10	20	\$173

Interest is calculated through September 15, 2013, and will continue to accrue at the rate set forth in section 63-3045(6)(c), 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.
