

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 24596
[Redacted],)
)
)
) Petitioners.) DECISION
)
_____)

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated September 14, 2011, issued by the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission proposing income tax, penalty, and interest for taxable year 2007, in the total amount of \$2,738. Petitioners subsequently filed their 2007 Idaho income tax return, but did not include all the income attributed to them. The Bureau adjusted Petitioners’ return and modified the Notice of Deficiency Determination. Petitioners were asked to accept the modified Notice of Deficiency Determination and withdraw their protest. Petitioners did not respond, so the matter was referred for administrative review. The Tax Commission reviewed the matter and hereby issues its decision.

BACKGROUND

In a review of the information the Tax Commission receives from various sources, the Bureau found that Petitioners received sources of income that required Petitioners to file Idaho individual income tax returns. The Bureau researched the Tax Commission’s records and found Petitioners had not filed Idaho individual income tax returns for taxable years 2005 through 2007. The Bureau sent Petitioners letters asking them about their requirement to file Idaho income tax returns. Petitioners did not respond. The Bureau determined Petitioners were required to file an Idaho income tax return for taxable year 2007, so the Bureau prepared a return

for Petitioners from the information available, and sent them a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination and provided a 2007 Idaho individual income tax return in lieu of the return the Bureau prepared. The Bureau reviewed Petitioners' 2007 income tax return and found that Petitioners omitted income and claimed two additional dependent exemptions for foster children. Petitioners also provided a copy of an amended 2007 [Redacted] income tax return wherein they claimed the two additional dependent exemptions. The Bureau obtained information from the [Redacted] to verify the amended [Redacted] income tax return and, indeed, Petitioners did submit an amended return to the [Redacted] which was processed as filed.

The Bureau revised its Notice of Deficiency Determination to include the two additional dependent exemptions, but maintained the inclusion of the omitted income. The Bureau sent Petitioners a modified Notice of Deficiency Determination and asked that Petitioners withdraw their protest.

Petitioners did not withdraw their protest, but rather, provided a statement and additional documentation disputing the cancellation of debt income reported by the [Redacted] Petitioners stated their loan with [Redacted] was included in their bankruptcy that was filed and discharged in 2001. Petitioners stated the loan was on a manufactured home that [Redacted] repossessed and sold in 2007. Petitioners stated all the proceeds from the sale went to [Redacted]. Petitioners stated that since the loan was part of their bankruptcy and they were discharged of the debt, they should not have received any cancellation of indebtedness income in 2007.

The Bureau contacted [Redacted] and requested copies of their records regarding the loan and what lead to the issuance of the 1099-C in 2007. [Redacted] stated that even though

[Redacted] was listed as a creditor in Petitioners' bankruptcy, there was no indication in their file that the loan was discharged. Since Petitioners either fell behind or stopped making payments on the loan, [Redacted]repossessed the manufactured home and sold it in 2007. [Redacted] stated that because the sale did not cover the balance due on the loan, a 1099-C was reported for the balance written off. When the Bureau received this information, it referred the matter for administrative review.

The Tax Commission reviewed the case and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners requested a telephone hearing, but when the scheduled time for the hearing came and the call was made, Petitioners did not answer. Petitioners later contacted the Tax Commission and discussed the omitted income. Petitioners stated the cancellation of debt income was from a loan on a manufactured home located in [Redacted]. Petitioners stated the loan was included in their 2001 bankruptcy. Petitioners stated their son lived in the manufactured home and was paying rent, which all went to [Redacted]. Petitioners stated the manufactured home was sold in 2007 and all the proceeds went to [Redacted].

Petitioners conceded receiving the retirement income from [Redacted] and that it was omitted from their Idaho income tax return. Petitioners asked for additional time to get documentation from [Redacted] showing the cancellation of debt income was reported in error. The Tax Commission allowed Petitioners more than adequate time to provide the documentation, but it never came. Therefore, the Tax Commission decided the matter based upon the information available.

LAW AND ANALYSIS

Idaho Code section 63-3030 provides the income thresholds for filing Idaho individual income tax returns. The information gathered by the Bureau clearly shows Petitioners received wages and 1099 income in 2007 that exceeded the income threshold for filing an income tax return. Therefore, Petitioners were required to file an Idaho individual income tax return.

Petitioners did not deny they were required to file an Idaho income tax return for 2007 and they did provide a return for that year. However, upon review of that return, the Bureau found that Petitioners did not include all the income Petitioners reportedly received in 2007. Petitioners omitted income from [Redacted] and cancellation of debt income from [Redacted]. Petitioners agreed to the omission of the distribution from [Redacted], but argued the cancellation of debt income was discharged in their 2001 bankruptcy and should not be taxable.

Internal Revenue Code section 108 states in pertinent part,

Income from discharge of indebtedness.

(a) Exclusion from gross income.

(1) In general. Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2014.

Petitioners stated the cancellation of debt income was from the repossession and sale of a manufactured home they owned. Petitioners stated the mortgage holder of the manufactured home, [Redacted], sold the manufactured home and was repaid on the loan. Petitioners claim the loan from [Redacted] was discharged in their 2001 bankruptcy.

From the information available, the Tax Commission does not believe Petitioners' loan on the manufactured home was discharged in their bankruptcy and, therefore, the cancellation of debt income exempted from tax. Petitioners stated the manufactured home loan was included in the bankruptcy, which it most likely was; however, the debt was a secured debt and [Redacted] would have taken possession of the manufactured home at the close of the bankruptcy. Not so in this case. Petitioners still had access to the manufactured home and apparently rented it to their son who made payments to [Redacted]. When the payments stopped, [Redacted] foreclosed on the loan, sold the manufactured home, and wrote off the balance of the loan. This occurred in 2007, six years after Petitioners' bankruptcy. It is highly unlikely that [Redacted] held onto the manufactured home for six years if it received the manufactured home from Petitioners' bankruptcy in 2001.

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). Petitioners did not provide anything to show the cancellation of debt on the manufactured home loan was discharged in their bankruptcy. Therefore, the Tax Commission finds the cancellation of debt income is not excluded as provided in IRC section 108.

The Bureau added interest and penalty to Petitioners' Idaho tax. The Tax Commission reviewed those additions and found them to be appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

CONCLUSION

Petitioners' income for 2007 exceeded the filing requirements for filing Idaho individual income tax returns. Petitioners were required to file an Idaho income tax return. Petitioners'

2007 Idaho income tax return failed to include all the income attributed to Petitioners. Petitioners were unable to show the omitted income was not part of taxable income. Therefore, the Tax Commission upholds the modified Notice of Deficiency Determination.

THEREFORE, the Notice of Deficiency Determination dated September 14, 2011, and directed to [Redacted] is hereby AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that Petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,312	\$328	\$367	\$2,007

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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
