

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25592
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated October 29, 2012, directed to [Redacted] issued by the Tax Discovery Bureau of the Idaho State Tax Commission. The Notice of Deficiency Determination proposed income tax, penalty, and interest for taxable years 2003 through 2007, in the total amount of \$8,199. Petitioners do not dispute that [Redacted] was required to file Idaho income tax returns; Petitioners argue [Redacted] returns should be filed as married filing joint with additional dependent exemptions. Petitioners stated correct returns have been prepared, but would only be submitted if the Tax Commission agrees to preserve their right to the legal claim that the Tax Commission's collection effort is barred by the statute of limitations. 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 Tax Discovery Bureau (Bureau) found that [Redacted] received W-2 wages for taxable years 2003 through 2007. The Bureau researched the Tax Commission's records and found [Redacted] did not file Idaho individual income tax returns for those years. The Bureau sent [Redacted] a letter asking about her requirement to file Idaho income tax returns. [Redacted] did not respond. The Bureau obtained information from the [Redacted], which showed no returns filed by

[Redacted], but did show a substitute return for taxable year 2006 prepared by the [Redacted]. The substitute return reported [Redacted] as single with one personal exemption.

The Bureau prepared returns for [Redacted] as a single individual with one personal exemption and sent her a Notice of Deficiency Determination. Petitioners protested, acknowledging their failure to file Idaho individual income tax returns. Petitioners stated the taxable years in question were tied up in [Redacted] Tax Court. Petitioners stated they received a favorable settlement and the [Redacted] accepted their returns for those taxable years. Petitioners stated [Redacted] returns should be filed as married filing joint with a total of five exemptions. Petitioners did not understand how the Bureau could prepare single returns for [Redacted] when [Redacted] information was used to create the returns. Petitioners stated the returns they prepared for Idaho showed them entitled to a total refund of \$673. Petitioners stated they are prepared to prove [Redacted] does not owe the tax, penalty, and interest as stated in the Notice of Deficiency Determination. However, Petitioners stated they will not submit their returns until they are assured, in the form of an agreement, that their right to the legal claim that the Tax Commission's collection effort is barred by the statute of limitations. Consequently, Petitioners have not provided any of the questioned taxable years' income tax returns.

The Bureau acknowledged Petitioners protest, explained the basis for preparing the Idaho income tax returns as they were, mentioned the statute of limitations for claiming refunds, and asked if [Redacted] wished to continue her protest. Petitioners responded that the Bureau was non-responsive to their protest letter. Petitioners stated the Bureau was ignoring their [Redacted] returns for the taxable years 2003 through 2007, and ignoring their request for an agreement that would preserve their right to assert the statute of limitations as a legal defense to any collection activity. Petitioners believed that submitting their Idaho income tax returns would effectively

waive their right to assert that defense, so they refuse to submit their returns without the agreement. Petitioners stated they are entitled to their refunds and if the Tax Commission has the right to demand their returns, they have the right to their refunds.

Because of Petitioners' statement regarding their [Redacted] income tax returns, the Bureau requested further information from the [Redacted]. The information the Bureau received only showed a change to [Redacted] 2007 [Redacted] income tax return. [Redacted] 2007 return was reported as married filing joint with two exemptions. The Bureau modified the return it prepared for [Redacted] for taxable year 2007 to agree with the [Redacted] information. The Bureau sent [Redacted] a modified determination and asked if she still wanted to continue her protest.

Petitioners responded again that the Bureau was non-responsive to their correspondence and that the Bureau's position was indefensible. Petitioners asked that their case be forwarded to the Tax Commission's legal department. Consequently, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners did not respond. 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 available to the Bureau clearly shows [Redacted] received wages in each of the years that exceeded the income threshold for filing income tax returns. Therefore, [Redacted] was required to file Idaho individual income tax returns.

Petitioners acknowledged their requirement to file and stated their Idaho returns were ready to be submitted. However, Petitioners stated they were hesitant to submit their returns due to their belief they would be relinquishing a right they did not want to give up. Petitioners believed by submitting their income tax returns they would be waiving their right to assert a statute of limitations defense on any collection activity in relation to their income tax returns. Petitioners did not cite any authority for their position, but they did state that all their returns were refund returns, which would appear to make a statute of limitations defense on collection a moot point.

Idaho Code section 63-3068 provides the statute of limitations for assessing and collecting Idaho income taxes. It states, in pertinent part,

(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.

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of twelve (12) years from the date of entry of the record of assessment required by section 63-3045A, Idaho Code, of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter. (Underlining added.)

If Petitioners want to assert a statute of limitations defense for collecting taxes from old taxable years, section 63-3068 would seem to quash that defense, since Petitioners have not filed returns for the years in questions.

Petitioners also argued that the Bureau knew [Redacted] correct filing status and number of exemptions because of the reliance on [Redacted] information when the Bureau prepared her returns. The returns the Bureau prepared for [Redacted] were based upon the best information available at the time, which included information from the [Redacted]. In fact, the latest

information from the [Redacted], as of September 15, 2014, shows the same information the Bureau used in the modified determination.

As for Petitioners' argument that [Redacted] returns should be filed as married filing joint, the filing of joint returns with an individual's spouse is an election made by the taxpayers making the joint filing. *See* Internal Revenue Code section 6013. Because filing a joint income tax return is an election, neither the Bureau nor the Tax Commission can make that election for a husband and wife. Therefore, unless taxpayers file their returns as married filing joint, the Tax Commission is left with the remaining filing statuses to choose from when preparing returns for taxpayers. In [Redacted] case, the Bureau followed what the [Redacted] determined as her filing status.

In regards to Petitioners' statement that the Bureau did not allow [Redacted] all the dependent exemption deductions she was entitled, the argument against those exemption deductions goes to the burden of proof. Deductions are a matter of legislative grace and a taxpayer seeking a deduction, or in this case an exemption, must show that he comes within the terms of the applicable statute to claim the deduction. New Colonial Ice Co., Inc. v. Helvering, 292 US. 435, 54 S.Ct. 788 (1934). Since dependent exemptions can change from year to year, it is the taxpayer's responsibility to file his/her return to claim the appropriate number of dependent exemptions. Once again in this case, the Bureau used the information obtained from the [Redacted].

## CONCLUSION

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 stated they have the information for a proper filing of their income tax returns, which would significantly reduce or eliminate any tax deficiency. However, Petitioners refused to provide that information. If a taxpayer is unable or unwilling to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931).

Petitioners argued the Bureau did not use the information from the [Redacted] that was used to settle these years at the [Redacted] level. However, Petitioners refused to provide that information and from the information recently obtained from the [Redacted], the Tax Commission found no changes were warranted to the returns the Bureau prepared for [Redacted]. Therefore, the Tax Commission upholds the Bureau's modified determination.

The Bureau added interest and penalty to [Redacted] 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.

THEREFORE, the Notice of Deficiency Determination dated August 24, 2012, and directed to [Redacted] is hereby AFFIRMED as MODIFIED.

IT IS ORDERED that [Redacted][Redacted] pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$ 590	\$148	\$322	\$1,060
2004	699	175	346	1,220
2005	880	220	383	1,483
2006	1,321	330	481	2,132
2007	704	176	216	<u>1,096</u>
			TOTAL DUE	<u>\$6,991</u>

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.

\_\_\_\_\_