

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39319
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On November 10, 2014, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioners) proposing income tax, penalty, and interest for taxable year 2008 in the total amount of \$16,899.

Petitioners, through their appointed representative, filed a timely protest. They did not request an informal conference and have not provided any additional information for consideration. Therefore, the Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

The petitioners were first contacted by the Commission in regards to a [Redacted] redetermination of their income for taxable year 2010. The petitioners received a final [Redacted] determination from the [Redacted] ([Redacted]) that involved not only taxable year 2010, but also other years, including taxable year 2008. During the administrative appeals process that resolved the matter for taxable year 2010, taxable year 2008 was discussed with the petitioners' representative. The representative was notified that the Commission had not received a 2008 Idaho individual income tax return from the petitioners. The appeal case for taxable year 2010 was held open for several months awaiting submission of the 2008 return, but it did not arrive. A decision was made for taxable year 2010 and taxable year 2008 was referred to the non-filer unit of the Tax Discovery Bureau. Because the petitioners had previously been

notified of the missing return, the Bureau immediately issued an NODD based on the information made available at the conclusion of the [Redacted] audit.

The petitioners' representative filed a timely protest of the NODD, stating that they do not agree with the determination because the statute of limitations for issuing a deficiency had passed. The Bureau then forwarded the file to the Legal/Tax Policy Division for continuation of the appeals process.

The tax policy specialist sent petitioners a letter that explained their options for redetermining the notice. Petitioners did not respond. Therefore, the Commission issues its decision based upon the information presently contained in the file.

The petitioners in this case are not disputing the increase in taxable income as a result of the [Redacted] audit, but rather feel the Commission had no authority to issue the NODD and cited Idaho Code section 63-3068 to support their position.

Code sections 63-3068 states: (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.

The petitioners' appointed representative claims the petitioners filed their 2008 [Redacted] and state income tax returns on the same date, October 13, 2009, which according to the code section above, would have the statute of limitations for issuing a notice of deficiency determination expiring October 13, 2012. However, no proof of mailing has been provided by the petitioners, only a copy of the petitioners' [Redacted] [Redacted] which shows the October 13, 2009, date next to the heading, Return Due date or Return Received date.

Further review of the [Redacted] transcript shows a substitute for return was prepared by the [Redacted] on November 9, 2009, an amended return was received on February 25, 2011,

and a penalty was assessed by the [Redacted] for “filing tax return after the due date.” The adjusted gross income shown on the transcript is consistent with the amount shown on the final [Redacted] determination. Based on this information, it does not appear the [Redacted] return was filed timely and the petitioners have provided nothing to show the Idaho return was filed at all, let alone timely.

In addition, during the appeals process for taxable year 2010, the petitioners’ appointed representative was asked directly if she would be filing a 2008 Idaho return for the petitioners that included the [Redacted] audit adjustments, to which she responded on June 25, 2014, “I can file a return if that’s easiest for you for 2008.” She at no time indicated a return had previously been filed.

The petitioners have provided no documentation to show their 2008 Idaho individual income tax return was filed. Even if the return had been submitted on October 13, 2009, the Commission would still have the statutory authority to issue a notice. Idaho Code section 63-3068(f) states:

(f) When Idaho taxable income or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitation for issuing a notice of deficiency shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the state tax commission by the taxpayer, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection the term “final federal determination” shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, only those specific items of income, deductions, gains, losses, or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

The petitioners' appointed representative sent the Commission a copy of the final audit report on June 19, 2014, as part of the appeals process for taxable year 2010. The audit report included the adjustments for taxable year 2008. The Notice of Deficiency Determination for taxable year 2008 was issued November 10, 2014, well within one year of the date the final [Redacted] determination was delivered to the Commission.

Idaho Code section 63-3002 states it is the intent of the Idaho legislature to make the Idaho income tax code identical to the Internal Revenue Code in the way taxable income is determined.

From the cited Idaho Code sections it is apparent the Idaho legislature intended any changes made to the petitioners' [Redacted] return to be reflected on the petitioners' Idaho return. It is the Commission's position that the changes made to the petitioners' [Redacted] return must be made to the petitioners' state return.

Therefore, the Commission upholds the NODD issued by the Bureau which coincides with the [Redacted] adjustments made by [Redacted].

THEREFORE, the Notice of Deficiency Determination dated November 10, 2014, and directed to [Redacted] and [Redacted] is hereby APPROVED and MADE FINAL.

The petitioners have paid the amount shown in the NODD, therefore no DEMAND for payment is made or necessary.

An explanation of the petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
