

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

In the Matter of the Protest of	)	
[Redacted]	)	DOCKET NO. 0-014-657-536
	)	
Petitioners.	)	DECISION
_____	)	

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We uphold the Notice of Deficiency Determination (Notice) dated January 18, 2018. This means **you need to pay \$15,764** of tax, penalty, and interest for taxable years 2013 through 2015. The Commission now DEMANDS immediate payment of this amount.

[Redacted] (Petitioners) filed a prompt protest and petition for redetermination. Petitioners did not request an informal hearing and have not provided any additional information for the Commission’s consideration.

Petitioners were residents of Idaho during the years under review and timely filed their Idaho individual income tax returns for taxable years 2013 through 2015.

In 2017, the auditor from the Commission’s Tax Discovery Bureau learned [Redacted] plead guilty to stealing \$130,482 from a vulnerable adult over a three-year period, 2013, 2014 and 2015. The auditor examined Petitioners’ income tax returns for these years but could not find the embezzled funds in their gross income. The auditor issued Petitioners a Notice to include in income \$12,179, \$45,980 and \$72,323 respectively for taxable years 2013, 2014 and 2015.

The U.S. Supreme Court has ruled that “unlawful, as well as lawful, gains are comprehended within the term ‘gross income.’ See *James v. United States*, 366 U. S. 213, 218 (1961).

Petitioners' contention, according to their appointed representative, is that:

“The “embezzled income” is not income. All “embezzled” money received is being treated as a loan. The \$130,482 is being paid back in full. A payment arrangement has been approved. The taxpayers have started their payment plan and no payments have been missed at this time. Therefore, this is not income but treated as a loan, so no additional taxes should be owed.”

Petitioners may have considered the acquired funds to be a loan. However, [Redacted] was charged with, and plead guilty to exploiting a vulnerable adult by taking money and/or credit valued in excess of \$1,000. The \$130,482 was not a loan, but rather embezzled funds.

Petitioners have not submitted documentation or authority to show that the funds embezzled are not taxable. Therefore, the Commission finds that the auditor's determination must be affirmed.

The auditor added interest and penalty to Petitioners' tax deficiency. The Commission reviewed those additions and found them proper per Idaho Code §§ 63-3045 and 63-3046(b), respectively.

THEREFORE, the Notice of Deficiency Determination dated January 18, 2018 and directed to [Redacted] is hereby APPROVED and MADE FINAL.

IT IS ORDERED that Petitioners pay the following tax, penalty, and interest (calculated to March 31, 2019):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2013	\$900	\$450	\$172	\$1,522
2014	3,404	1,702	514	5,620
2015	5,352	2,676	594	<u>8,622</u>
			TOTAL DUE	<u>\$15,764</u>

An explanation of Petitioners' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2019,  
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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