

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

In the Matter of the Protest of	)	
[Redacted]	)	DOCKET NO. 0-481-069-056
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated May 17, 2016. Petitioner disagreed that the Internal Revenue Service (IRS) adjustment to his federal income tax return was final. Petitioner stated he protested the IRS adjustment and was requesting a due process hearing with the IRS. The Tax Commission reviewed the file, the information Petitioner provided, and latest IRS information. For the following reasons, the Tax Commission is upholding the audit adjustment.

**BACKGROUND**

The Income Tax Audit Bureau (Bureau) received information from the IRS that an audit adjustment was made to Petitioner’s 2012 federal income tax return. The Bureau reviewed the changes and determined Petitioner’s 2012 Idaho income tax return should be adjusted as well. The Bureau adjusted Petitioner’s Idaho income tax return and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau’s determination stating he protested the IRS adjustment. Petitioner stated he filed form 12153 with the IRS requesting a due process hearing. The Bureau acknowledged Petitioner’s protest. The Bureau asked Petitioner to keep it informed on the progress of his protest with the IRS. Petitioner contacted the Bureau a few times but provided no new information from the IRS. Petitioner eventually stopped communicating, so the Bureau decided to refer the matter for administrative review.

The Tax Commission reviewed the file and sent Petitioner a letter that discussed his options for redetermining the Notice of Deficiency Determination. Petitioner responded via e-mail with a copy of federal form 12153 and a brief statement that he is contesting the adjustment with the IRS. Over the course of the next year and a couple of months, the Tax Commission reviewed Petitioner's federal account transcript. During that period, the Tax Commission found the IRS enhanced its collection efforts, and updated the penalty and interest to be collected. The Tax Commission did not find any reference to a pending claim or even that Petitioner filed a claim.

Seeing that no claim is pending with the IRS and the only information Petitioner provided was a request for a collection due process hearing, the Tax Commission decided this case based on the information available.

### **LAW AND ANALYSIS**

Idaho Code § 63-3002 states the intent of the Idaho Legislature regarding the Idaho Income Tax Act. It states that the Idaho Act is to be identical to the Internal Revenue Code as it relates to the measurement of taxable income, in so much as the taxable income reported to Idaho is the same as that reported to the IRS, subject to the modifications contained in the Idaho law. Therefore, any changes to Petitioner's federal taxable income should also be made to Petitioner's Idaho taxable income.

The IRS audited Petitioner's business expenses claimed on his schedule C – Profit or Loss From Business. The IRS disallowed the expenses Petitioner claimed for car and truck, and the business use of his home. Since Idaho generally piggybacks all adjustments made at the federal level (See Idaho Code § 63-3002), the Bureau made the corresponding adjustments to Petitioner's Idaho individual income tax return.

In Idaho, a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Petitioner's argument was that he was protesting the adjustment with the IRS. However, the documentation Petitioner provided to support his argument was federal form 12153. Federal form 12153 is a form a taxpayer can use to stop forced collection activities by a tax lien or levy. To use this form a taxpayer's case must be in collection and a notice of federal tax lien, or a proposed levy or actual levy, or both has been served on the taxpayer. The taxpayer must also state a reason for requesting a hearing to reconsider the lien or levy. In this case, Petitioner stated his reason as not being able to pay.

Petitioner's ability to pay does not change the correctness of the adjustments made to his income tax return. Petitioner did not meet his burden of showing error. Based on the latest information from the IRS, the IRS has not changed its position regarding its audit. Therefore, the Tax Commission hereby upholds the adjustment to Petitioner's Idaho income tax return.

### **CONCLUSION**

The IRS audited and adjusted Petitioner's 2012 federal income tax return. The Bureau reviewed the audit information and made the applicable adjustments to Petitioner's Idaho income tax return. Petitioner's argument was his inability to pay his federal tax liability. This does not change the incorrect nature of his tax return. The inability to pay is a collection issue not a determination of tax issue. Therefore, the Tax Commission upholds the Notice of Deficiency Determination.

The Bureau added the penalty of Idaho Code § 63-3069 to Petitioner's tax deficiency. The Tax Commission reviewed the addition of the penalty and found it appropriate.

The Bureau also added interest to Petitioner's tax. The Tax Commission reviewed that addition and found it appropriate. *See* Idaho Code § 63-3045.

THEREFORE, the Tax Commission AFFIRMS the Notice of Deficiency Determination dated May 17, 2016, directed to [Redacted]

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$2,108	\$105	\$472	\$2,685

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioner's right to appeal this decision is enclosed.

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

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
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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