

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
[Redacted])	DOCKET NO. 1-835-812-864
)	
)	
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 May 11, 2018. This means **you need to pay \$109,059** of tax, penalty, and interest for taxable years 2007 through 2010. The Commission now DEMANDS immediate payment of this amount.

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

[Redacted] (Petitioners) were residents of Idaho during the years under review and timely filed their Idaho individual income tax returns for taxable years 2007 through 2010.

In 2017, the auditor from the Commission’s Tax Discovery Bureau learned [Redacted] plead guilty to grand theft, perjury, and tax evasion. [Redacted] embezzled \$38,304, \$156,786, \$221,145, and \$288,563, respectively for tax years 2007 through 2010. The auditor examined Petitioners’ income tax returns for these years but could not find the embezzled funds in their gross income. The auditor determined an adjustment to Petitioners’ 2007 through 2010 was called for, but the general three-year statute of limitations provision set out in Idaho Code § 63-3068(a) had expired.

However, Idaho Code § 63-3068(c) gives an exception to the general three-year statute of limitation for issuing a deficiency notice. This subsection states:

In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

As underreporting large amounts of income infers willfulness, *See Holland v. United States*, 348 U.S. 121, 139 (1954), the Bureau issued Petitioners a Notice for these years, increasing their adjusted gross income to include the embezzled funds.

[Redacted] through his bankruptcy attorney, protested the Notice, saying in his appeal letter:

“...my client contests the amounts being asserted against him personally and would note that he is in the process through his new accountant of submitting an innocent spouse determination to the Internal Revenue Service.... As such, we consider it premature to assert individual liability against [Redacted] until that innocent spouse determination has been finalized.”

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).

Idaho Code § 63-3031(b)(3) defines the responsibility of a married couple making the election to file their tax returns with a filing status of married filing joint:

(3) If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

Because Petitioners chose to file their tax returns as married filing joint, the State of Idaho holds Petitioners jointly and severally liable. One spouse may have a cause of action against the other spouse. However, the state stays in a neutral position. Joint and several liabilities simply mean the state may collect any part of the liability up to the entire amount from either spouse.

Petitioners filed their 2007 through 2010 Idaho income tax returns as married filing joint. Therefore, both are responsible for the tax, jointly and severally. [Redacted] would like the Commission to relieve him of the tax obligation as an innocent spouse. However, for the years under review, a provision for an innocent spouse does not exist in Idaho Code.

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

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

THEREFORE, the Notice dated May 11, 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 July 19, 2019):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$3,047	\$1,524	\$1,454	\$6,025
2008	12,781	7,669	5,280	25,730
2009	17,420	10,452	6,326	34,198
2010	22,498	13,499	7,109	<u>43,106</u>
			TOTAL DUE	<u>\$109,059</u>

An explanation of Petitioners' 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.

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.
