

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

██████

Petitioner.

DOCKET NO. 0-619-353-088

DECISION

██████ (Petitioner) protested the Notice of Deficiency Determination (Notice) dated November 5, 2024, issued by the Tax Discovery Bureau (Bureau) for tax year 2017, and tax years 2020 through 2022. Petitioner disagreed with the Bureau’s determination of his Idaho taxable income for the years shown in the Notice. The Idaho State Tax Commission (Tax Commission) reviewed the matter and for the reasons stated below modifies the Notice.

BACKGROUND

The Bureau reviewed Petitioner’s income information and filing history with Idaho and found resident returns for tax years 2018, 2019 and 2023. All three returns included a federal Schedule C showing contractor as the principal business. Based on this information, the Bureau determined Petitioner may have a filing requirement for tax year 2017, and tax years 2020 through 2022.

The Bureau sent Petitioner a letter asking about his requirement to file Idaho income tax returns for these years. Petitioner did not respond. Therefore, the Bureau determined Petitioner’s individual income for tax years 2017, and 2020 through 2022 as follows: tax year 2017, Form W-2 income; tax year 2020, Form W-2 income along with income reported on Form 1099-C/A and an estimate of Schedule C income; tax years 2021 and 2022, estimated Schedule C income. The estimated Schedule C income was based on the median Idaho occupation compensation for a contractor according to the Bureau of Labor Statistics. With the inclusion of the estimated business

income and income found in Tax Commission records, Petitioner's income exceeded the threshold amount for filing Idaho income tax returns for the audit period. Therefore, the Bureau prepared returns for Petitioner and issued a Notice with a single filing status, allowable deductions and a credit for documented withholding.

Petitioner protested the Notice, stating that he is challenging the Bureau's findings because he has only worked part-time since 2017 and has been on Idaho state Medicaid since 2021 after undergoing heart surgery. Petitioner also stated he was gathering information to file his returns but needs assistance from his accountant who has been unavailable. The Bureau acknowledged Petitioner's protest and allowed him time to provide the missing returns. When Petitioner did not provide returns, the Bureau referred the matter to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals sent Petitioner a letter explaining his options available for redetermining a Notice. Petitioner did not respond. Appeals sent Petitioner a follow-up letter. Again, Petitioner did not respond. Therefore, the Tax Commission decides the matter based on the information available.

LAW AND ANALYSIS

Idaho Code section 63-3030 provides the income thresholds for filing Idaho individual income tax returns and states that every resident individual that is required to file a federal return is required to file an Idaho return. Idaho Code section 63-3068(d) states that in the case of failure to file a return a notice of deficiency may be issued, and the tax imposed by this chapter may be assessed at any time.

If a taxpayer fails to file a return when required, the Tax Commission may prepare a return and issue a Notice based on its own information and on information it obtains by examining the

taxpayer's records, from testimony, or otherwise¹. When a taxpayer's accounting records are inadequate, or when a taxpayer fails to produce records, the Tax Commission may reconstruct income by several different methods. However, the Tax Commission's methods of reconstructing income must be reasonable and defensible.

Typically, the Tax Commission requires the taxpayer to establish that the amount asserted in its Notice is incorrect—this is because for most cases a deficiency determination issued by the Tax Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.”² However, the presumption of correction does not apply to a “naked” assessment—that is, an assessment without any foundation whatsoever. *United States v. Janis*, 428 U.S. 433, 441 (1976); *Erickson v. Comm’r*, 937 F.2d 1548, 1551 (10th Cir. 1991) (“Some reasonable foundation for the assessment is necessary to preserve the presumption of correctness.”). In other words, a court will not uphold a tax deficiency based merely on the presumption of correctness where it has been shown that the amount of the deficiency is entirely arbitrary or based on no rational foundation.

In cases involving unreported income, as is the issue here for tax years 2020 through 2022, the taxing authority is given wide latitude in reconstructing or estimating the amount of the unreported income, and the presumption of correctness will apply unless the technique employed is manifestly irrational or arbitrary. *De Cavalcante v. Commissioner*, 620 F.2d 23, 28 (3d Cir.1980) (the presumption of correctness requires only “a minimal factual basis”); *U.S. v. Fior d’Italia, Inc.*, 536 U.S. 238, 243 (2002) (courts have consistently upheld estimates of an individual’s tax liability as long as the method used is a “reasonable one”); *Erickson v. Comm’r*, 937 F.2d at 1555 (in testing

¹ Idaho Code section 63-3042, Idaho Tax Administration and Enforcement Ruel IDAPA 35.02.01.200.

² *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)).

the minimum requirements of a notice of deficiency, there is only one rule, “that there be some rational underpinning”).

A tax deficiency is not “naked” if it is based on a reasonable estimate of the taxpayer’s income, or if the unreported income asserted in the deficiency can be linked back to the taxpayer. *Fior d’Italia, Inc.*, 536 U.S. at 241; *Day v. C.I.R.*, 975 F.2d 534, 537 (8th Cir. 1992). The Tax Commission is required only to produce “some evidentiary foundation linking the taxpayer to the alleged income-producing activity” before the deficiency determination will be accorded its usual presumption of correctness. *Weimerskirch v. Comm’r*, 596 F.2d 358, 362 (9th Cir. 1979). Although a determination that is unsupported by evidentiary foundation is clearly arbitrary and erroneous, the required showing is “minimal.” *Blohm v. Comm’r*, 994 F.2d 1542, 1549 (11th Cir. 1993).

In this case, the Bureau’s use of 2017 W-2 income is well documented, and Petitioner’s protest does not include an objection to the proposed amount of tax due for this year. What Petitioner objects to is the Bureau’s estimate of his income based on the median Idaho occupation compensation for contractors of \$45,300 for tax years 2020 through 2022.

During the administrative review process these estimates of business income were compared to the amounts shown on the Schedule Cs filed by Petitioner. The Bureau’s estimates exceeded the reported business income by \$34,400, \$41,300 and \$15,202 for years 2018, 2019 and 2023, respectively. Therefore, instead of using the Bureau’s estimations, the Tax Commission used alternative means to determine Petitioner’s Idaho taxable income for tax years 2020 through 2022. The Tax Commission has no record of 1099 income for Petitioner in tax years 2018 and 2019, with a small amount of 1099 NEC in 2023; yet Petitioner reported Schedule C income of \$10,900, \$4,000 and \$30,098 for tax years 2018, 2019 and 2023, respectively. Petitioner’s average Schedule C income for these years is \$14,999. Petitioner self-reported more income than Tax

Commission records show. Taking this into consideration, along with information Petitioner provided about his work history and health issues, the Tax Commission finds \$14,999, the average of the Schedule C income reported for tax years 2018, 2019 and 2023, to be a more reasonable estimate from which to determine Petitioner's Idaho taxable income for the years under review.

The Bureau added interest and penalty to Petitioner's Idaho tax. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Tax Commission MODIFIES the Notice dated November 5, 2024, directed to Petitioner.

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>
2017	\$1,350	\$338	\$445	\$2,133
2020	517	129	106	752
2021	53	13	10	76
2022	38	10	6	<u>54</u>
			TOTAL DUE	\$3,015

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 _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2025,
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:



Receipt No.
