

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-863-339-520
)	
Petitioner.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>)	

The Tax Commission reviewed the case involving _____ (Petitioner) for tax years 2003 through 2010 and hereby issues its final decision upholding the Notice of Deficiency Determination (Notice) dated June 27, 2022. This means Petitioner needs to pay \$96,253 of tax, penalty, and interest for tax years 2003 through 2010. The Tax Commission DEMANDS immediate payment of this amount.

Background

Petitioner filed Idaho individual income tax returns for tax years 2003 through 2010 as an Idaho resident. The Tax Commission’s Income Tax Audit Bureau (Audit) received information showing changes to Petitioner’s 2003 through 2010 federal returns due to federal audit adjustments made by the Internal Revenue Service (IRS). The IRS increased Petitioner’s Schedule C income and self-employment tax deduction for all years and decreased Petitioner’s itemized deductions for 2003 and 2010. Petitioner did not file amended Idaho returns to update his Idaho taxable income, so Audit adjusted Petitioner’s 2003 through 2010 Idaho returns to match the changes to his federal returns and issued a billing letter on May 24, 2022.

Audit received a response from a third party – later named by Petitioner as his attorney-in-fact – requesting that Audit “withdraw or abate any and all taxes referred to in [the Notice] and all other taxes from years 2003 [through] 2010.” As justification for this request, the attorney-in-fact also wrote,

IC Section 63-3068(a) provides the Idaho State Tax Commission must issue a notice of deficiency (sic) within 3 years after the original return or the amended return was filed. Furthermore, the Statute IC Section 63-3068(h) provides that is (sic) the taxes are properly (sic) assessed within that time period, collection by levy or court proceeding may take place within 6 years from the date of entry of the record of assessment of the tax.

In accordance with established practices, Audit issued the Notice on June 27, 2022, and sent a letter acknowledging Petitioner's protest. When Petitioner did not withdraw his protest, Audit forwarded the matter to the Tax Commission's Appeals unit (Appeals) for administrative review.

On October 13, 2022, Appeals sent the attorney-in-fact a letter outlining the available options for redetermining a protested Notice. When the attorney-in-fact did not respond, Appeals sent a follow-up letter to Petitioner, which also generated no response. In the absence of any additional information, the Tax Commission decided this matter based on the information currently available.

Law and Analysis

Petitioner protested the Notice, through his attorney-in-fact, citing Idaho Code section 63-3068, *Period of Limitations for Issuing a Notice of Deficiency and Collection of Tax*. Although not explicitly stated, it is evident that Petitioner feels Audit was outside the period of limitation for issuing the Notice on June 27, 2022, increasing tax for years 2003 through 2010. Likewise, although not explicitly stated, it is evident that Petitioner feels that the period for collecting the tax for these years has expired. The attorney-in-fact cited Idaho Code sections 63-3068(a) and 63-3068(h).

Idaho Code section 63-3068(a) states:

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 (emphasis added).

Idaho Code section 63-3068 contains several subsections which provide for variation from the three-year time limit in subsection (a) for issuing a notice of deficiency. In this particular case, two subsections are relevant.

First, Idaho Code section 63-3068(f) reopens the period of limitation from subsection (a) for issuing a notice of deficiency when Idaho taxable income is adjusted because of a final federal determination. “Final federal determination” means the final resolution of all issues adjusted in an audit by the IRS. Available information shows that the IRS adjusted Petitioner’s 2003 through 2010 federal taxable income and issued a final determination in March 2020. Idaho Code section 63-3002 requires an individual’s Idaho taxable income for any given tax year to be equal to the taxable income reported to the IRS for the same taxable year, except for modifications required or allowed by Idaho law. Petitioner filed returns as an Idaho resident, and Idaho taxes residents on all income wherever derived. Therefore, the increase to federal taxable income directly increases Petitioner’s Idaho taxable income unless some provision in Idaho Code dictates otherwise. Based on the adjustments made by the IRS, there is no provision in Idaho Code that would exclude the additional federal income from Idaho taxable income. The reopened period of limitation “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.” There is no evidence that Petitioner delivered the final federal determination to the Tax Commission, so the one-year countdown to issue a notice of deficiency never started.

Second, Idaho Code section 63-3068(c) 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.

In a statement issued October 23, 2014¹, the United States Attorney's Office for the District of Idaho announced that Petitioner had pleaded guilty to charges of conspiracy to attempt to evade and defeat tax. The statement went on to say that Petitioner had admittedly conspired to fail to report \$750,000 of income between 1998 and 2012. The period between 1998 and 2012 includes all tax years contained in the Notice. Petitioner intentionally understated income on his federal returns, thereby intentionally understating income on his Idaho returns. This is a clear attempt to defeat or evade the tax imposed by Chapter 30 of Idaho Code title 63, meaning that a notice of deficiency could be issued at any time.

In most cases, the three-year period of limitation to issue a notice of deficiency described in Idaho Code section 63-3068(a) would apply. In this case, however, based on the relevant facts, the normal period of limitation does not apply, and Audit was not outside any period of limitation to issue the Notice for tax years 2003 through 2010.

Idaho Code section 63-3068(b) states:

If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of twelve (12) years from the date of entry of the record of assessment required by section 63-3045A, Idaho Code, of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter (emphasis added).

Idaho Code section 63-3045A, *Assessment of Tax*, states, in relevant part:

¹ United States Attorney's Office, District of Idaho.

(d) For all other purposes of this chapter, a tax is deemed assessed when: (i) A taxpayer fails to file a protest with the state tax commission within the time prescribed in section 63-3045, Idaho Code, or an action in district court or the board of tax appeals within the time prescribed in subsection (a) of section 63-3049, Idaho Code; or (ii) Upon conclusion of any such proceeding for any amount upheld at that conclusion of such proceeding.

Idaho Code section 63-3045, *Notice of Redetermination or Deficiency – Interest*, states:

(c) No assessment of a deficiency in respect to the tax imposed by this chapter, and no distraint or proceedings in court for its collection, shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

In Petitioner's case, a protest was filed within the 63-day protest period allowed in Idaho Code section 63-3045(1)(a), and his appeal rights have not been exhausted. Therefore, no tax has been assessed by way of the Notice for any of the years in question, and the 12-year collection period mentioned in Idaho Code section 63-3068(b) has not elapsed.

Petitioner's attorney-in-fact cited Idaho Code section 63-3068(h) as the section which allows a set timeframe in which to collect tax that has been properly assessed. As discussed above, that timeframe is set in Idaho Code section 63-3068(b). Idaho Code section 63-3068(h) describes the period of limitation for issuing a notice of deficiency in the case of an amended return. As Petitioner did not file any amended returns for tax years 2003 through 2010, Idaho Code section 63-3068(h) is irrelevant to this case.

Audit added interest to Petitioner's tax deficiency. The Tax Commission reviewed this addition and finds it to be appropriate and in accordance with Idaho Code section 63-3045.

Audit added a 50% fraud penalty to Petitioner's tax deficiency. The Tax Commission reviewed this addition. Idaho Code section 63-3046(a) states:

If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

Idaho Code section 63-3069 states, in relevant part:

(1) Upon final determination of any deficiency or refund of federal taxes, the taxpayer is required to send written notice to the state tax commission within one hundred twenty (120) days of the final determination . . .

(3) If the notice required by this section is not sent by the taxpayer to the state tax commission within one hundred twenty (120) days of the final determination, the taxpayer will be subject to the negligence penalty provided by section 63-3046, Idaho Code.

As stated prior, available information shows that the IRS made its final determination in March 2020 and Petitioner did not provide the final determination to the Tax Commission within the allotted time. Therefore, the negligence penalty is appropriate. Idaho Code section 63-3046(b) states: “If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.” As established earlier, Petitioner filed tax returns for 2003 through 2010 intentionally understating income to avoid tax. Therefore, the fraud penalty is also appropriate. Idaho Tax Commission Administration and Enforcement Rule 420 precludes the assessment of both the fraud penalty and the negligence penalty. The Tax Commission finds the fraud penalty to be more appropriate in this case.

Conclusion

Based on all available information and relevant facts, the Tax Commission finds that the adjustments in the Notice issued by Audit are necessary, that the Notice was issued within the period of limitation dictated by Idaho Code, and that the period of limitation for collection of the additional tax from the Notice has not expired.

THEREFORE, the Notice dated June 27, 2022, and directed to _____ is hereby AFFIRMED and MADE FINAL.

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>
2003	\$11,329	\$5,665	\$10,007	\$27,001
2004	3,589	1,795	2,955	8,339
2005	1,647	824	1,257	3,728
2006	4,272	2,136	2,993	9,401
2007	6,162	3,081	3,885	13,128
2008	5,691	2,846	3,223	11,760
2009	10,328	5,164	5,332	20,824
2010	1,052	526	494	2,072
			TOTAL DUE	<u>\$96,253</u>

Interest is calculated through October 23, 2023.

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

DATED this _____ day of _____ 2023.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2023,
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.
