

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-880-089-088
	)	
	)	
Petitioners.	)	DECISION
	)	

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(Petitioners) protested the Notice of Deficiency Determination dated March 3, 2020. Petitioners disagreed with the adjustments the Income Tax Audit Bureau (Bureau) made to their 2016, 2017, and 2018 Idaho individual income tax returns. The Tax Commission reviewed the matter and for the reasons stated below modifies the Notice of Deficiency Determination.

**BACKGROUND**

Petitioners filed their 2016, 2017, and 2018 Idaho individual income tax returns claiming an investment tax credit (ITC) for all three years. The Bureau selected Petitioners’ returns to review the ITC claimed. Upon reviewing Petitioners’ returns the Bureau found other items of interest including another subtraction claimed in 2016, moving expenses claimed in 2016, unreimbursed employee business expenses claimed in 2016 and 2017, and a substantial increase in mortgage interest in 2017.

The Bureau sent Petitioners a letter asking them to document the employee business expenses claimed, the home mortgage interest claimed, and the personal property taxes claimed on their 2016 and 2017 schedules A. Petitioners did not respond, so the Bureau sent a follow up letter to Petitioners. Again, Petitioners did not respond. Since Petitioners did not substantiate the questioned items, the Bureau disallowed those deductions. The Bureau also disallowed Petitioners’ moving expenses claimed in 2016, the other subtraction Petitioners claimed in 2016, and the ITC

Petitioners claimed in 2016, 2017, and 2018. The Bureau sent Petitioners a Notice of Deficiency Determination itemizing all the disallowed deductions, expenses, subtractions, and credits.

Prior to receiving the Notice of Deficiency Determination, Petitioners called the Bureau leaving a message that they just received the Bureau's follow-up letter asking for their documentation. Petitioners stated they moved out of state and the mail was just now catching up with them. The Bureau returned Petitioners' call telling them that a Notice of Deficiency Determination had been sent to them, but they could still submit documentation for consideration. Petitioners contacted the Bureau and said they would be faxing their documentation to the Bureau. The documentation Petitioners sent consisted of closing information on the house they purchased in Meridian, Idaho, Mr. [redacted] employment letter from the National Park Service, a map of the distance between Petitioners' home in Idaho and the Park where Mr. [redacted] worked, student loan interest statements, mortgage interest statements, homeowner's insurance coverage, property tax assessment notices, HSA/MSA contribution statement, and a Pennsylvania income tax billing notice for tax year 2015. The Bureau reviewed Petitioners' documentation, made a slight modification to its audit report, and sent them a modified Notice of Deficiency Determination.

Petitioners protested the modified determination stating that they disagreed and that they were trying to get additional documentation for [redacted] clothing and shoes, and documentation for cell phone usage [redacted] had while working at a local hospital. Petitioners stated the moving expenses were for [redacted] when he was working in other states. Petitioners stated they subtracted [redacted] retirement distribution on their Idaho return because they paid tax on it to Pennsylvania.

The Bureau acknowledged Petitioners' protest and referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals sent Petitioners a letter explaining the options available for redetermining a Notice of Deficiency Determination. Petitioners responded saying

they wanted Appeals to work with their representative (Representative). Appeals attempted several times to contact Representative. When Representative did respond, she stated she was having phone problems and has since switched providers. Representative stated she was a solo practitioner and had been away from her office taking care of family. Representative asked for a time when she and Appeals could discuss the issues to get the matter resolved. Appeals replied with some times Representative could call and gave her the option of having Appeals call her.

About a week later after not hearing back from Representative, Appeals sent Representative a synopsis of Petitioners' case. Appeals wrote what adjustments were made and gave Representative what was needed to reverse the adjustments or stated that the claim was incorrect and not allowable. Representative wrote back stating, over the weekend, she would be reviewing the information Petitioners sent her so that she could help get the matter resolved.

A couple of months later after not receiving anything from Representative, Appeals contacted both Petitioners and Representative for information on what was being done to support their position. Representative replied that she sent Appeals information about a month ago and assumed it was received. Representative stated she would send the information again. A couple of weeks later after not receiving anything from Representative, Appeals contacted Petitioners and Representative again saying nothing had been received. Representative replied that she sent the information via secured email and that she would overnight the information in the morning. A couple of days later, Representative contacted Appeals stating she was sending her thoughts about the audit adjustments to Petitioners and would let them decide how they wanted to proceed with their appeal. Representative also asked for a calculation of accrued interest.

Appeals provided Representative with the interest calculation and waited for a response from Petitioners. After a couple of months with no response from Petitioners, Appeals contacted

Petitioners asking them to respond by a certain date on how they wanted to proceed with their appeal. Petitioners did not respond, so the Tax Commission reviewed the information available and decided the matter as follows.

### **LAW AND ANALYSIS**

Internal Revenue Code (IRC) section 162 provides for the deduction of all the ordinary and necessary expenses paid or incurred in carrying on a trade or business. Idaho Code section 63-3042 allows the Tax Commission to examine a taxpayer's books and records to determine the correctness of an Idaho income tax return. Tax Commission Administration and Enforcement Rule IDAPA 35.02.01.200 provides that, "A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability."

Deductions are a matter of legislative grace, and the taxpayer bears the burden of proving that he is entitled to the deductions claimed. *New Colonial Ice Co., Inc. v. Helvering*, 292 US. 435, 440, 54 S.Ct. 788 (1934). Taxpayers are required to maintain records that are sufficient to enable the determination of his correct tax liability. *See* IRC § 6001; Treasury Regulation § 1.6001-1(a). The burden rests upon the taxpayer to disclose his receipts and claim his proper deductions. *United States v. Ballard*, 535 F.2d 400, 404 (1976). If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. *Burnet v. Houston*, 283 U.S. 223, 51 S.Ct. 413 (1931). A taxpayer's general statement that his or her expenses were incurred in pursuit of a trade or business is not sufficient to establish that the expenses had a reasonably direct relationship to any such trade or business. *Near v. Commissioner of Internal Revenue*, T.C. Memo. 2020-10 (2020).

#### Itemized Deductions:

Petitioners itemized their deductions for tax years 2016 and 2017. The Bureau asked Petitioners to substantiate the deductions they claimed for personal property taxes, real estate taxes, home mortgage interest, and unreimbursed employee business expenses. Petitioners documented portions of the amounts claimed as real estate taxes and home mortgage interest. The Bureau allowed what Petitioners documented. The rest of Petitioners' itemized deductions were disallowed.

Petitioners did not provide any further documentation for their 2016 or 2017 itemized deductions. Therefore, the Tax Commission upholds the Bureau's modified adjustments to Petitioners' itemized deductions.

#### Moving Expenses:

Petitioners claimed moving expenses in 2016 when [redacted] went to work for the National Park Service. The Bureau disallowed Petitioners' moving expenses stating that [redacted] employment did not meet the time requirement for moving expenses. The moving expense deduction requires that the individual claiming expenses for moving to a new location be employed at the new location for 39 weeks as a full-time employee. Petitioners did not provide information to substantiate the time requirement, and without further documentation the Tax Commission cannot allow the deduction. Therefore, the Tax Commission upholds the moving expense adjustment.

#### Other Subtraction:

Petitioners claimed another subtraction on their 2016 Idaho income tax return. This subtraction appears to be a distribution from a retirement plan. Petitioners included the retirement distribution in their federal adjusted gross income.

In the preparation of Idaho individual income tax returns, the taxpayer begins with federal adjusted gross income and makes certain modifications to arrive at Idaho taxable income. *See* Idaho Code section 63-3002. Generally, the subtraction of retirement plan distributions is not a modification to federal adjusted gross income. Idaho only allows a deduction of retirement benefits from certain qualified retirement plans (Idaho Code section 63-3022A). Petitioners' retirement distribution was not paid from one of those qualified retirement plans. Therefore, the Tax Commission upholds the adjustment for the other subtraction.

#### Investment Tax Credit:

Petitioners claimed the ITC on their personal residence. Idaho Code section 63-3029B defines a qualifying investment for purposes of the ITC as property defined in the IRC of 1986, as in effect prior to November 5, 1990, sections 46(c) and 48. IRC section 48 stated that a qualifying investment is property subject to depreciation. Property subject to depreciation is property used in a trade or business. A personal residence by its nature is not property used in a trade or business. Consequently, Petitioners' personal residence is not a qualifying investment and therefore no ITC can be allowed. Petitioners claimed ITC on their personal residence on their 2016, 2017, and 2018 Idaho income tax returns; tax years 2017 and 2018 are carryover years since the full credit was not used in 2016. The Tax Commission upholds the ITC adjustment.

### **CONCLUSION**

The Bureau adjusted Petitioners' 2016, 2017, and 2018 income tax returns because documentation was lacking, inadequate, or the deduction or credit was incorrectly claimed. The Tax Commission reviewed the adjustments made and found the Bureau's modified adjustments appropriate based on the documentation and information available. Therefore, the Tax Commission agrees with and upholds the Bureau's modified Notice of Deficiency Determination.

The Bureau added interest and penalty to Petitioners' tax liability. 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 AFFIRMS as MODIFIED the Notice of Deficiency Determination dated March 3, 2020, directed to .

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2016	\$3,298	\$165	\$639	\$ 4,102
2017	3,823	191	615	4,629
2018	3,292	165	389	3,846
			TOTAL DUE	\$12,577

Interest is calculated to September 30, 2022.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022,  
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.

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