

In the Matter of the Protest of

Petitioner.

DECISION

shown in the Notice. Petitioner requested additional time to prepare her returns. The Bureau acknowledged Petitioner's protest and allowed her multiple extensions 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 the options available for redetermining a Notice. Petitioner did not respond. 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

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

Tax Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *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)). 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 at issue here in 2017 through 2022 tax years, 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 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 estimated Petitioner’s business income based on the 2017 amount with a five percent (5%) incremental change over the years. The Notice explained that the Bureau estimated Petitioner’s business income “by increasing the reported 1099-MISC for tax year 2017 by a rate of 5% per year.” The Notice also explained that the Bureau’s use of the 5% growth rate was generally accepted for the Bureau’s practice. However, it is not clear how the 5% growth rate was chosen and why it was reasonable in estimating Petitioner’s business income. For tax years 2018 through 2022, the records of Petitioner’s informational returns, i.e., 1099-MISC and 1099-NEC, were available to the Bureau and would have provided a reasonable foundation for her business income.

The burden of proving the Tax Commission’s assessment was erroneous remains with Petitioner when there is concrete information in the Tax Commission’s records. In this case, Petitioner failed to show that the 1099-MISC was incorrect for tax year 2017. On the other hand, the Tax Commission finds that the business income the Bureau estimated at the 5% incremental change over the years is arbitrary and without reasonable foundation. The Bureau did not summons business records or perform any independent investigation of the business income. The Bureau did not provide any explanation as to who Petitioner was in business with and what exactly she may have been doing to earn such a substantial income, nor did they explain why the 5% incremental change is reasonable. An estimate that is arbitrary and without foundation is a “naked” assessment that is not entitled to any presumption of correction. Therefore, the Tax Commission modifies

Petitioner's business income for tax years 2018 through 2022 based on the information available in Tax Commission records.

CONCLUSION

Petitioner received income in tax years 2017 through 2022 that exceeded the threshold for filing Idaho income tax returns and therefore must file Idaho income tax returns. The Tax Commission determined the amount of Petitioner's business income based on concrete records, i.e., 1099s, W2s, K-1s, etc. Therefore, the Tax Commission modifies the Notice.

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 September 11, 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	\$1,919	\$480	\$549	\$2,948
2018	4,432	1,108	1,076	6,616
2019	44	11	9	64
2020	10	10	1	21
2021	445	111	62	618
2022	7	10	1	18
TOTAL DUE				<u>\$10,285</u>

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.
