

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-459-786-752
██████████ ██████████	)	
	)	
Petitioner.	)	DECISION
_____	)	

██████████ ██████████ (Petitioner) protested the Notice of Deficiency Determination (Notice) dated September 10, 2024. The Tax Commission reviewed the matter and hereby issues its final decision to modify the Notice.

**Background**

During a review of taxpayer information, the Tax Commission’s Tax Discovery Bureau (Bureau) could not locate any Idaho individual income tax returns that Petitioner had filed. The Bureau determined that Petitioner met the requirements to file Idaho tax returns for tax years 2016 through 2022.

The Bureau sent Petitioner a letter on July 25, 2024, stating “We haven’t received your Idaho individual income tax returns for 2016 through 2022. We have information that shows you might be required to file.” The Bureau asked Petitioner for a response to indicate whether she needed to file, was not sure if she needed to file, or believed she did not need to file. Petitioner’s response indicated she did not need to file because she did not live in Idaho during all of the years 2016 through 2022.

After receiving Petitioner’s written response, the Bureau contacted her by telephone. Case notes state that Petitioner told the Bureau she started a business mid-year 2017. The Bureau informed Petitioner that starting her business in Idaho is what created the need to file returns and

that the next step would be to issue a Notice. Petitioner stated that she would use the Notice to prepare actual returns.

The Bureau prepared returns for Petitioner and issued the Notice on September 10. In the absence of actual returns or other data from Petitioner, the Bureau estimated self-employment income for 2016 through 2022 using the 2023 median Idaho compensation for real estate brokers and sales agents from the U.S. Bureau of Labor Statistics. The Bureau estimated deductible business expenses at 25% of estimated gross receipts. The Bureau used the Single filing status and allowed no dependents.

Petitioner responded on November 11, writing that she disagreed with the taxes due, the total deficiency, and the gross and taxable income for all the years in the Notice. She stated that her income during those years was from part-time sources. The Bureau sent Petitioner a letter on November 14, acknowledging the protest and providing Petitioner with a schedule for filing the missing returns (the first by December 9, then one every two weeks until all returns were filed).

On December 6, Petitioner sent the Bureau an email requesting an extension for completing the returns. After a series of emails and phone calls, the Bureau sent a letter containing a new filing schedule. The first return was to be filed by February 1, 2025, then another return every two weeks until all returns were filed. Petitioner sent an email on January 29, requesting another extension to file the returns. The Bureau did not grant any additional time.

On February 14, Petitioner provided the Bureau with a federal income tax return for 2022, but no Idaho income tax return. The Bureau sent Petitioner a letter acknowledging receipt of the information and canceling the Notice for only tax year 2022. On March 11, Petitioner provided the Bureau with a federal income tax return for 2021. A week later, Petitioner provided the Bureau with an Idaho income tax return for 2021. The Bureau sent Petitioner a letter acknowledging

receipt of the information and canceling the Notice for only tax year 2021. On April 8, Petitioner provided the Bureau with photos of a federal income tax return for 2018. Upon reviewing the photos Petitioner had uploaded, the Bureau determined they were illegible and could not be processed. The Bureau sent Petitioner a letter informing her of this and requested federal and Idaho returns in a different format. The Bureau also stated that Petitioner had not submitted returns in accordance with the filing schedule. The Bureau requested either returns or a signed protest withdrawal by April 24, or the issue would be forwarded to the Tax Commission's Appeals unit (Appeals) for resolution. On April 29, Petitioner uploaded an Idaho income tax return for 2019 and an incomplete federal return consisting of two Schedules E. The Bureau did not respond to this submission as the file was already in preparation for transfer to Appeals.

On June 2, Appeals sent Petitioner a letter explaining the options available for redetermining a protested Notice. A response was requested by July 2. On July 2, Petitioner called and spoke with Appeals. The discussion centered on Petitioner's filing requirement and ended with Appeals planning to send Petitioner a summary of the case so far and what information was still needed. Appeals sent that summary on July 3 but did not set a deadline for response. On August 1, Appeals resent the July 3 email with a request for an estimated schedule of completing returns by August 11. On August 25, Appeals sent Petitioner a letter with copies of the July 3 and August 1 emails and requested a response by September 5. On August 28, Petitioner replied to Appeals' July 3 email proposing to file two years' returns by September 15, with the remaining returns filed by October 15. Appeals replied, stating that the proposed schedule was acceptable. On September 18, Appeals sent Petitioner an email asking if Petitioner had submitted a return according to the approved schedule. Petitioner has not provided any further response.

## Law & Analysis

The Bureau's Notice included tax years 2016 through 2022. Before transferring the case to Appeals, the Bureau cancelled the Notice for tax years 2021 and 2022. This decision will not address those years further.

Idaho Code section 63-3030 establishes the requirements for filing Idaho individual income tax returns and states that every resident individual required to file a federal return is required to file an Idaho return. Idaho Code section 63-3068(d) states that a Notice may be issued, and the tax imposed by this chapter may be assessed, at any time when a required return is not filed.

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 otherwise.<sup>1</sup> 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 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."<sup>2</sup> 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 (10<sup>th</sup> Cir. 1991) ("Some reasonable foundation for the assessment is necessary to preserve the presumption of

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<sup>1</sup> Idaho Code section 63-3042; Idaho Tax Administration and Enforcement Rule IDAPA 35.02.01.200.

<sup>2</sup> *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)).

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 2016 through 2020, 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 (8<sup>th</sup> 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 (9<sup>th</sup> 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 (11<sup>th</sup> Cir. 1993).

In this case, Petitioner’s responses indicated that she was not a resident of Idaho for all the years included in the Notice. After reviewing available information, the Tax Commission is unable to find any evidence that Petitioner was living or earning income in Idaho for any significant time

prior to 2018. Therefore, the Tax Commission cannot confirm that Petitioner was required to file Idaho income tax returns for 2016 or 2017.

Regarding tax years 2018 through 2020, information Petitioner provided clearly shows gross income greater than the filing requirement, but the information she provided is insufficient to be considered valid Idaho returns. This information also does not address the income included in the Notice, which is roughly based on reliable data provided by third parties. Based on available information and given Petitioner's lack of response, the Tax Commission determined that the Idaho income tax calculated by the Bureau is a reasonable estimation of Petitioner's actual tax liability for tax years 2018 through 2020.

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

### **Conclusion**

Petitioner is required to file Idaho income tax returns for 2018, 2019, and 2020. Petitioner has had ample time to do so and has received multiple extensions and reminders. The Bureau's Notice shows reasonable estimates of Petitioner's tax liability for tax years 2018 through 2020. Petitioner does not appear to meet Idaho's filing requirements for tax years 2016 and 2017.

THEREFORE, the Notice dated September 10, 2024, and directed to [REDACTED] [REDACTED] is hereby CANCELLED for tax years 2016 and 2017, UPHeld for tax years 2018, 2019, and 2020, and MADE FINAL.

IT IS ORDERED that Petitioner pays the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$1,862	\$466	\$561	\$2,889
2019	1,840	460	456	2,756
2020	1,822	456	401	<u>2,679</u>
				<u>\$8,342</u>

The Tax Commission DEMANDS immediate payment of this amount. Interest is calculated in accordance with Idaho Code section 63-3045.

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.

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