

his resubmission. Petitioner stated he tried contacting his taxpayer advocate for additional information.

The Bureau recommended that Petitioner protest the Bureau's determination, which he did. Petitioner stated in his protest that he was disputing the IRS assessment, and that the IRS still had an open investigation on his 2017 tax year. Petitioner stated if the IRS found that any changes needed to be made, he would file an amended Idaho income tax return. Petitioner asked that the Tax Commission leave his case open and that he would update the Tax Commission as soon as the IRS makes its determination.

The Bureau acknowledged Petitioner's protest and asked Petitioner to send it a copy of the latest correspondence from the IRS. Petitioner provided his last correspondence which was the letter stating that the documentation submitted with his request for reconsideration does not warrant any changes to the audit. The Bureau reviewed the letter and referred the matter to the Tax Commission's Appeals Unit (Appeals).

Appeals reviewed the matter and sent Petitioner a letter giving him the options for redetermining a protested audit. Petitioner contacted Appeals and stated he is still working with the IRS to resolve his tax issue. Petitioner stated he submitted documents to the IRS but has not gotten an acknowledgement from the IRS of them receiving his documentation. Petitioner stated he believes his case is still open with the IRS.

Considering the IRS's backlog during the pandemic years and its track record of responding to audit reconsiderations, Appeals asked Petitioner to provide it with the same documentation information he sent to the IRS. Appeals told Petitioner that if the IRS does not decide his case in the next few months, it would look at his documentation and make a determination for the Tax Commission.

Six months later, Appeals requested Petitioner's account transcript from the IRS. The account transcript showed a pending claim that was resolved with no changes to the federal audit. However, after reviewing the dates of the entries on the transcript, Appeals is not convinced that the IRS considered the resubmitted documentation Petitioner provided. Therefore, the Tax Commission reviewed the documentation Petitioner provided and decided the matter based on that information.

LAW AND ANALYSIS

Idaho Code section 63-3002 states that Idaho taxable income is to be identical to federal taxable income, subject to certain modifications contained in the Idaho law. The IRS changed Petitioner's federal taxable income by disallowing all of Petitioner's unreimbursed employee business expenses. The Bureau reviewed the federal audit and found Petitioner claimed those same employee business expenses on his Idaho return.

Petitioner stated he was contesting the adjustments made by the IRS. Petitioner wanted the Tax Commission to wait until the matter was fully settled with the IRS before making any adjustments to his Idaho return. The Tax Commission asked Petitioner to provide evidence that the IRS was reconsidering the adjustments. The evidence Petitioner provided stated the documentation he submitted did not warrant a change to the adjustment. Yet, Petitioner's belief was that the IRS was still investigating his case because he resubmitted his documentation in a more understandable format. Petitioner provided that same information to the Tax Commission.

Generally, the Tax Commission follows a final federal determination whenever a change is made to a taxpayer's federal income tax return. However, in the recent past, due to the COVID pandemic, the Tax Commission has found it more expeditious to make its own determination on

certain contested federal audits. This case is one of those cases. The Tax Commission’s decision to review Petitioner’s documentation came from the information reported on his account transcript.

Petitioner’s account transcript showed an exam adjustment and that there was a claim pending as of August 4, 2022. On August 29, 2022, the IRS reported the claim was resolved with no changes to the audit adjustments. The letter Petitioner received stating his documentation did not warrant any changes to its audit was sent on September 8, 2022. Other documentation Petitioner provided Appeals was postal tracking information of the documentation Petitioner sent to the IRS that has a delivery date of Thursday, August 25, 2022. Considering the dates reported, it is highly unlikely that the IRS reconsidered Petitioner’s documentation on Friday, August 26, 2022, and resolved the claim on Monday, August 29, 2022. Therefore, either the IRS is still reviewing Petitioner’s case, or it has simply chosen to ignore Petitioner's documentation. Regardless, the Tax Commission decided to review Petitioner's documentation and make its own determination on Petitioner's unreimbursed employee business expenses.

Internal Revenue Code (IRC) section 162 provides for the deduction of all the ordinary and necessary traveling expenses while away from home in the pursuit of a trade or business. To qualify for the “away from home” deduction, the Supreme Court has held that the taxpayer’s expenses must (1) be reasonable and necessary expenses, (2) be incurred while away from home, and (3) be incurred while in the pursuit of a trade or business. *Commissioner v. Flowers*, 326 U.S. 465, 470, 66 S.Ct. 250, 252-53, 90 L.Ed. 203 (1946).

Petitioner was an equipment operator working for _____ During 2017, Petitioner worked on jobs located in California, Nevada, Idaho, and Utah. Petitioner’s home for tax purposes was Ogden, Utah. Petitioner provided documentation and other information for his lodging expenses, his meals while away from home, and his mileage. Petitioner also provided a

statement from his employer regarding their reimbursement policy of paying the per diem rate under the union agreement. Petitioner stated the per diem rate was \$75 per day.

The Tax Commission reviewed Petitioner's documentation and allowed his lodging expenses that were documented and legible. The Tax Commission also allowed Petitioner the standard per diem rate for meals for the location where he was working. From these two amounts, the Tax Commission subtracted Petitioner's per diem reimbursement from his employer. The Tax Commission subtracted the per diem because it is not clear whether the per diem was included as wages on Petitioner's W-2 – Wage and Tax Statement. In addition to Petitioner's meals and lodging while away from home, the Tax Commission allowed Petitioner's vehicle expense at the standard mileage rate for the mileage on the use of his personal vehicle.

Petitioner also incurred union dues in 2017. The Tax Commission allowed the dues claimed. Petitioner reported clothing and tools and donations as part of his miscellaneous deductions. Petitioner's clothing and tools were not sufficiently documented, and his donations were claimed as charitable contributions elsewhere on his schedule A. Consequently, the Tax Commission did not allow those expenses.

Deductions are a matter of legislative grace, and taxpayers bear the burden of proving they are 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 their correct tax liability. *See* IRC § 6001; Treasury Regulation § 1.6001-1(a). Therefore, the Tax Commission modifies the Notice of Deficiency Determination based on the records Petitioner provided.

CONCLUSION

The IRS disallowed Petitioner’s unreimbursed employee business expenses on his 2017 federal income tax return. Because the Idaho return uses federal adjusted gross income as its starting point, the Bureau reviewed the audit information and made the same adjustments to Petitioner’s Idaho income tax return.

Petitioner was unable to show with certainty that the IRS is still reconsidering its audit and it is questionable from the information available that a final federal determination has been made. Petitioner provided the Tax Commission with the documentation he sent to the IRS. The Tax Commission reviewed Petitioner’s documentation and found that Petitioner had deductible unreimbursed employee business expenses. Therefore, the Tax Commission modifies the Notice of Deficiency Determination from what was disallowed in the federal audit.

The Bureau added the penalty of Idaho Code section 63-3069 to Petitioner’s tax deficiency. The Tax Commission reviewed the addition of the penalty and found it not applicable since it is questionable whether there is a final federal determination on Petitioner’s unreimbursed employee business expenses.

The Bureau also added interest to Petitioner’s tax. The Tax Commission reviewed that addition and found it appropriate. *See* Idaho Code section 63-3045. Interest is calculated to March 15, 2024.

THEREFORE, the Tax Commission MODIFIES the Notice of Deficiency Determination dated October 13, 2022, directed to

IT IS ORDERED that Petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2017	\$238	\$56	\$294

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.
