

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 2-061-173-760
	)	
Petitioner.	)	DECISION
_____	)	

(Petitioner) protested the Notice of Deficiency Determination dated February 3, 2022. Petitioner disagreed with the Idaho individual income tax returns the Tax Discovery Bureau (Bureau) prepared for him for the tax years 2013 through 2019. Petitioner stated he works in construction and that he has had many deductions over the years that would reduce the amount of tax he owes. Petitioner was able to provide more accurate income information for tax years 2016, 2017, and 2019; therefore, the Tax Commission modifies the Notice of Deficiency Determination.

**BACKGROUND**

In a review of the Tax Commission’s records, the Bureau found that Petitioner did not file Idaho individual income tax returns for the tax years 2013 through 2019. The Bureau sent Petitioner a letter asking about his requirement to file Idaho income tax returns. Petitioner did not respond. The Bureau gathered Petitioner’s income information that was submitted to the Tax Commission by third parties. The Bureau determined Petitioner was required to file Idaho income tax returns for all the years in question. The Bureau prepared returns for Petitioner and sent him a Notice of Deficiency Determination.

Petitioner protested the Notice of Deficiency Determination. Petitioner stated he does owe taxes, but he has deductions the Bureau did not include that would greatly reduce the amount owed. The Bureau acknowledged Petitioner’s protest and allowed Petitioner thirty (30) days to submit

his returns. When Petitioner did not provide his returns within the 30 days, the Bureau referred the matter to the Tax Commission's Appeals Unit (Appeals).

Appeals reviewed the matter and sent Petitioner a letter stating the methods available for redetermining the Notice of Deficiency Determination. Petitioner contacted Appeals and asked what he needed to do. Petitioner stated he does not have documentation back to 2013. Appeals asked what documentation he had for the more current years. Petitioner stated in the later years he earned more income. Petitioner stated the early years were not as good. Appeals asked Petitioner how he earned his income. Petitioner stated he worked as a mason in \_\_\_\_\_ and he also did a side job as a security person for a homeowners' association closing down a pool at night. Appeals asked Petitioner if he supplied the materials on his masonry jobs. Petitioner stated most of his jobs he worked for someone as an independent contractor. Petitioner stated he did bid some jobs on his own but only on a few of those did he provide the materials. He was mostly paid for his labor. Petitioner stated he did not purchase many tools, but he did buy a truck. Petitioner stated all his work was done in the \_\_\_\_\_ area.

Appeals asked Petitioner about his income for the years the Bureau estimated his income, 2016, 2017, and 2019. Petitioner stated 2019 was a good year and he thought he could get his earnings from the individual he worked for. Petitioner stated he would try to get his income information. As for Petitioner's expenses, Appeals stated that since he had no documentation, any expenses allowed would be at the Tax Commission's discretion. Petitioner stated he would call Appeals when he gets his income information.

After not hearing from Petitioner for a couple of months, Appeals contacted Petitioner to see if he had obtained his income information. Petitioner did not respond. Appeals sent Petitioner a letter giving him a deadline to provide the information. Petitioner contacted Appeals and

provided his income information for 2016, 2017, and 2019. Petitioner stated he did not have 1099s or other documentation, he just got the numbers from the individual he worked with for his masonry work. Petitioner stated that, other than for 2016, his actual numbers are very close to what the Bureau estimated.

Petitioner stated he worked for the Homeowners' Association during those years too. Petitioner stated he does not have that income, but it was \$12.50 a night every day of the year. Petitioner stated the amount should be very similar to the other years.

When asked about his expenses, Petitioner stated there may have been some materials costs and some repairs but not a lot. Petitioner could not say if his expenses were even between 5 and 10 percent of his total masonry income.

#### **LAW AND ANALYSIS**

Idaho Code section 63-3030 provides the income thresholds for filing Idaho income tax returns. The information the Bureau gathered clearly showed Petitioner's income exceeded the threshold for 2013, 2014, 2015, and 2018. Petitioner was required to file Idaho income tax returns for those years. As for tax years 2016, 2017, and 2019, the income information Petitioner provided showed his income exceeded the filing threshold.

Petitioner did not deny he was required to file Idaho income tax returns. Petitioner thought that with his deductions, expenses, and correct income for 2016, 2017, and 2019 his tax owed would be greatly reduced.

Deductions are a matter of legislative grace. *New Colonial Ice Co., Inc. v. Helvering*, 292 US. 435, 440, 54 S.Ct. 788 (1934). Taxpayers are required to maintain records to enable the determination of their tax liability. See IRC § 6001; Treasury Regulation § 1.6001-1(a). The burden is on the taxpayer to claim his proper deductions. *United States v. Ballard*, 535 F.2d 400,

404 (1976). A taxpayer's general statement of his deductions and expenses is not sufficient to establish the occurrence of the deduction or expense. *Near v. Commissioner of Internal Revenue*, T.C. Memo. 2020-10 (2020).

The Tax Commission is cognizant of the fact that Petitioner most likely purchased small tools and materials in the performance of doing masonry work. Citing *Cohan v. Commissioner*, 39 F.2d 540, 543-544 (2d Cir. 1930), the Court in *Near, supra*. stated an estimate of the amount of a deductible expense may be made if a taxpayer establishes the expense is deductible but is unable to substantiate the precise amount. However, there must be sufficient evidence in the record to permit the Court to conclude that a deductible expense was paid or incurred in at least the amount allowed. *Garza v. C.I.R.*, T.C. Memo. 2014-121 (2014), citing *Williams v. United States*, 245 F.2d 559, 560 (5th Cir.1957). In this case, Petitioner stated he did not purchase very many tools and there were only a few jobs that he bought some materials. Petitioner stated he did buy a truck during those years. Because the Tax Commission cannot verify the expense, the amount of the expense, or even the year Petitioner incurred the expense, and by Petitioner's own admission he did not purchase many tools or materials, the Tax Commission hesitates to even venture a guess. As for the truck, Petitioner may be entitled to a deduction, but the substantiation rules are far more strict than for ordinary business expenses, and generally taxing authorities are prohibited from estimating these types of expenses. See Internal Revenue Code sections 274(d) and 280F. See also *Rodriguez v. Commissioner of Internal Revenue*, T.C. Memo. 2009-22, (2009). Consequently, the Tax Commission did not make any allowances for business expenses.

## **CONCLUSION**

Petitioner did not file income tax returns for tax years 2013 through 2019. Petitioner disagreed with the returns the Bureau prepared believing his tax liability would be lower. Petitioner

provided actual income amounts for the years the Bureau estimated but was unable to substantiate his business expenses. The information available was also insufficient for the Tax Commission to make a reasonable estimate of allowable business expenses.

The Tax Commission reviewed the returns the Bureau prepared for tax years 2013, 2014, 2015, and 2018 and found them to be a good representation of Petitioner's Idaho tax liability for those years. However, for tax years 2016, 2017, and 2019, the Tax Commission modifies the Bureau's returns to report the actual income earned as provided by Petitioner.

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

THEREFORE, the Tax Commission AFFIRMS as MODIFIED by this decision the Notice of Deficiency Determination dated February 3, 2022, directed to

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>
2013	\$1,064	\$266	\$389	\$ 1,719
2014	2,116	529	686	3,331
2015	2,396	599	682	3,677
2016	1,868	467	461	2,796
2017	3,202	801	686	4,689
2018	3,416	854	585	4,855
2019	4,070	1,018	505	<u>\$ 5,593</u>
			TOTAL DUE	<u>\$26,660</u>

Interest is computed to November 30, 2023.

An explanation of Petitioners' 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.

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