

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 14747
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
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	)	

On November 23, 1999, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), asserting income tax, penalty and interest in the amount of \$8,814 for the 1996 taxable year.

On January 25, 2000, the taxpayer filed an appeal and petition for redetermination. The taxpayer elected not to participate in an informal conference. Therefore, this decision is based on the information currently contained in the Commission's file. The Commission has reviewed the file, is advised of its contents, and now issues its decision. For the reasons set forth below, the Commission affirms the Notice of Deficiency Determination with interest updated through June 1, 2001.

This is a nonfiler case. The taxpayer did not file an Idaho income tax return for the 1996 taxable year. Based on information obtained by the Tax Commission's Enforcement Specialist, it appeared that the taxpayer, who lives in [Redacted], Colorado, worked in Idaho and did in fact have an Idaho income tax filing requirement for the 1996 taxable year. When contacted about his apparent Idaho income tax filing requirement, the taxpayer responded by stating he was a Colorado resident and therefore he was not required to file an Idaho income tax return or pay Idaho income taxes. Additionally, the taxpayer stated he already paid taxes on the income in question to the state of Colorado. The taxpayer believed he was entitled to a credit for the taxes paid to Colorado in the event he was responsible for any Idaho income tax.

The fact that the taxpayer is not a resident of Idaho does not relieve him of his legal

obligation to file an Idaho income tax return and to pay his taxes. The Idaho income tax return filing requirements are set out in Idaho Code § 63-3030. Idaho Code § 63-3030(a)(2) sets forth the filing requirements for individuals who are not residents of this state. Any nonresident individual who, during the taxable year, has a gross income from Idaho sources in excess of \$2,500 must file an Idaho individual income tax return. Nonresident individuals who are required to file an Idaho individual income tax return also must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024.

Idaho's statutes are in accord with the United States Supreme Court's decision addressing a state's constitutional ability to tax nonresident individuals. The Court held that "[J]ust as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein." Shaffer v. Carter, 252 U.S. 37, 52 (1920).

The record before the Tax Commission reveals the taxpayer worked in Idaho during the taxable year 1996 and received income for the Idaho work in excess of the filing threshold. The deficiency determined by the Commission concerns only Idaho source income. The taxpayer conceded he worked and earned income in Idaho for approximately 251 days of the 1996 taxable year. Commission staff prorated the taxpayer's income, as indicated on Form 1099-Misc., to reflect the 251 days worked in Idaho and arrived at an Idaho source income. Under Idaho's tax laws, the taxpayer was required to file an Idaho individual income tax return and to pay the Idaho income tax shown on that return.

Alternatively, the taxpayer argued he should receive a credit for 1996 income taxes paid to the state of Colorado regarding his Idaho source income. To advance his argument, the taxpayer

calculated the difference between the Idaho tax shown on the Notice of Deficiency Determination and the income tax paid to Colorado concerning the Idaho source income identified by the Commission. He then submitted a check to the Tax Commission for the difference between the Idaho tax due and the Colorado tax paid.

The taxpayer cannot claim a credit for Colorado tax paid on his Idaho source income. The Tax Commission repeatedly advised the taxpayer that a nonresident cannot claim a credit for tax paid to another state. The Idaho tax code provides resident taxpayers a credit for income tax to other states, but the credit does not apply to nonresident taxpayers. Idaho Code § 63-3029. Nonresident taxpayers must pay Idaho income taxes on their Idaho source income and then look to the tax laws of their home state to determine the availability of a credit for the Idaho income taxes they paid.

The Tax Commission finds that the taxpayer had an Idaho income tax filing requirement for the 1996 taxable year. It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Id. Since the taxpayer has failed to meet this burden in the present case, the Tax Commission has no choice but to find that the amount shown on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated November 23, 1999, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

