

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 15756
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On July 10, 2001, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable years 1994 and 1995 in the total amount of \$1,981.

The taxpayer filed a timely protest. He did not request a hearing and did not submit additional information. Therefore, the Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

During the years in question, the taxpayer failed to file Idaho individual income tax returns even though Tax Commission records show he appeared to satisfy the filing requirements stated in Idaho Code § 63-3030. [Redacted]. The information was provided in accordance with Internal Revenue Code § 63- 6103(d) and Idaho Code § 63-3077.

Idaho Code § 63-3045 (1)(a) states:

**63-3045. Notice of redetermination or deficiency -- Interest.**

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain

redetermination of the deficiency.

Because the taxpayer did not file state income tax returns, the Bureau prepared provisional returns and issued a deficiency notice. The income amounts were determined by examining the records retained by the Idaho Department of Labor and the Tax Commission as well as federal income information. Withholding was identified for both years and was credited against the resulting tax due.

The taxpayer responded with a letter of protest. He said he did not file a 1994 Idaho return because he moved to Alaska in January of that year and did not move back to Idaho until January of 1995.

The Bureau wrote back to the taxpayer and advised him the information retained by the Tax Commission [Redacted] identified Idaho source wages during both 1994 and 1995. The Bureau explained the definition of “part-year resident” to the taxpayer and provided him with forms and instructions for completing the Idaho tax returns.

When the taxpayer did not respond to that letter, on August 21, 2001, the Bureau wrote another letter to the taxpayer asking him for his returns. A completed 1995 Idaho return was enclosed for the taxpayer’s signature. The 1994 Idaho return that was also enclosed did not contain income information because the income record for 1994 did not appear to be complete. The Bureau asked the taxpayer to complete and sign the 1994 Idaho return and send both executed returns to the Tax Commission for filing.

When the taxpayer did not respond, his file was transferred to the Legal/Tax Policy Division of the Tax Commission for administrative review. The Tax Appeals Specialist sent the taxpayer a letter advising him his file had been received in the Legal Division. He did not acknowledge receipt of that letter.

The taxpayer does not deny he met the Idaho filing requirements for 1995. He said he was sure he had filed the Idaho return but he could not locate a copy of it. He did have copies of the returns for subsequent years.

The taxpayer denies he met the Idaho filing requirements for 1994. He said he lived in Alaska most of 1994 and was sure he did not work in Idaho that year.

Idaho Code § 63-3013 stated:

**63-3013. Resident.** The term "resident," for income tax purposes, means any individual who:

(a) Has resided in this state for the entire taxable year; or

(b) Is domiciled in the state of Idaho, except:

(1) An individual who has been absent from this state for at least four hundred forty-five (445) days in any consecutive fifteen (15) month period, and during such period at least two hundred fifty (250) days have been spent in a foreign country shall not be considered a resident of this state if he does not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year.

(2) An individual who has been absent from this state for more than fifteen (15) consecutive months and who has not been present in this state for more than sixty (60) days during any calendar year following the end of the fifteen (15) month period shall not be considered a resident of this state for that calendar year if he does not maintain a permanent place of abode in this state at which his spouse, unless he and his spouse are legally separated, or minor or dependent children are residing for more than sixty (60) days during the calendar year and if he does not hold an elective or appointive office of the government of the United States (other than the armed forces of the United States or career appointees in the United States foreign service) and is not employed on the staff of an elective officer in the legislative branch of the government of the United States.

(3) In order to qualify under the exceptions set forth under paragraphs (1) and (2) above the individual must not be claiming Idaho as his tax home for federal income tax purposes.

The statute provides that a taxpayer will be deemed to be a resident if he either has resided in Idaho for the entire year or if he was domiciled in Idaho. Domicile is defined in Idaho

Administrative Income Tax Rules as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973).

The taxpayer said he moved to Alaska in January of 1994 and returned to Idaho in January of 1995. Nothing in the taxpayer's two letters suggested he changed his domicile from Idaho to Alaska. Tax Commission records show the taxpayer had Idaho source income during 1994. The taxpayer did not file a federal or state return for the year. The Bureau determined the taxpayer's 1994 taxable income by using the income amount shown in Idaho Department of Labor records along with an average of the income he reported in other years. Idaho withholding in the amount of \$243 was allowed to offset the tax due.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). Having presented no information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

WHEREFORE, the Notice of Deficiency Determination dated July 10, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$821	\$205	\$456	\$1,482
1995	311	78	146	<u>535</u>
			TOTAL	<u>\$2,017</u>

Interest is computed through February 28, 2002.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]  
[Redacted]

Receipt No. [Redacted]

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ADMINISTRATIVE ASSISTANT 1