

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16669
[Redacted])	
Petitioners.)	DECISION
)	
)	

On June 28, 2002, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), asserting additional income taxes, non-filer penalty, and interest in the amount of \$12,345 for the 1995 through 1997 taxable years. The taxpayer filed a timely appeal and petition for redetermination. An informal hearing was held via telephone on January 28, 2003. Additional information has been gathered subsequent to that informal hearing. The Tax Commission, having reviewed the file, hereby issues its decision.

FACTS AND PROCEDURAL HISTORY

This is an Idaho source income case. At all times relevant to this protest [Redacted] lived in [Redacted], [Redacted]. From September 1994 until early October, 1997, [Redacted] was employed with [Redacted] as the director of the company's truck driving school located in [Redacted]. [Redacted] employment duties with [Redacted] included the management of the day-to-day operations of the [Redacted]. [Redacted] did not file Idaho nonresident individual income tax returns during any of the years under review.

In early 2002, the Tax Commission's Tax Discovery Bureau opened a non-filer audit investigation of [Redacted] based on information received from the Idaho Department of Labor indicating that [Redacted] earned wage income from his employment within Idaho. During this audit investigation the Tax Discovery Bureau obtained copies of federal W-2 forms issued to [Redacted] by [Redacted] for the 1995, 1996, and 1997 taxable years. The Notice of Deficiency Determination that is the subject matter of this protest was then issued. Although not clearly

disclosed in the Notice of Deficiency Determination, the Tax Discovery Bureau is asserting that while [Redacted] was a non-resident of Idaho in 1995 through 1997, 100% of his wage income from [Redacted] was “Idaho source income” and therefore taxable by the state of Idaho. This appeal and petition for redetermination followed.

ANALYSIS

In his letter of protest [Redacted] asserts that very little of his employment activity for [Redacted] was performed within Idaho. Rather, [Redacted]h claims that “[m]y occupation during those years was as an outside [Redacted]. The amount of time that I spent in Idaho on my job was extremely small – ‘De Minimus’ at most. This ‘Idaho Time’ was so extremely small that there was no accounting for it.” Letter of protest dated June 20, 2002. For the reasons set forth below, the Tax Commission is not willing to accept the taxpayer’s assertion that his Idaho employment activity was *de minimis*.

A nonresident individual that earns gross income from Idaho sources in excess of the minimum filing amount is required to file an Idaho nonresident individual income tax return. Idaho Code § 63-3030(a)(2). Wages and salary earned from employment activity taking place within Idaho is Idaho source income. During the 1995 taxable years, Idaho Code § 63-3027A(b) provided that nonresident individuals were subject to Idaho income tax on their income from Idaho sources. Subsection (c) of that section went on to provide that “income . . . derived from or related to sources within Idaho shall be computed in the manner prescribed in the regulations of the state tax commission.” Idaho Code § 63-3027A(c) (1989 & Supp. 1995). The pertinent regulation was Idaho Income Tax Administrative Rule 80.03.b (formerly Regulation 27A,1.c.ii). That Administrative Rule set out a general allocation formula used to compute the amount of wages derived from employment services taking place within Idaho. Under this allocation

formula, the amount of wages and salary from Idaho sources is determined based on the number of days worked in Idaho divided by the total days worked everywhere. The total days worked everywhere (the denominator) does not include holidays, vacation days, sick days, and other days where the individual is not actually performing employment services. This allocation formula was discussed by the Idaho Supreme Court in Hamilton v. Idaho State Tax Com'n, 119 Idaho 552, 808 P.2d 1297 (1991). For the 1996 and 1997 taxable years a virtually identical allocation formula is provided by Idaho Code § 63-3026A(3)(a)(i) and Income Tax Administrative Rule 262.

In an effort to verify [Redacted] claim that most of his employment activity for [Redacted] was related to travel outside of Idaho, the Tax Commission contacted the corporate headquarters for [Redacted] to see if it could obtain travel vouchers or similar proof of the taxpayer's business travel during the years under review. In response to that request the President and CEO of [Redacted] (which is apparently the parent corporation of [Redacted]) provided the following narrative:

We have received your letter . . . requesting information that would verify that [Redacted] would have traveled extensively for the Company. As described below, we are not able to provide documents that verify substantial travel.

I am attaching a typical job description for [Redacted] position as School director as you requested. [Redacted] was the school director at [Redacted] truck driving school location. As such, his primary responsibility was to manage on-site on a day-to-day basis the operations of the school, including student admissions, training schedules, accounts payable and receivable, personnel management, advertising, etc. Virtually all students are personally interviewed by the school director at the school facility.

I was in contact with [Redacted] on almost a daily basis during the time of his employment with our Company. It is my estimation that he spent the vast majority of his time in the office at our [Redacted] school. There was some minimal opportunity and need to travel to local Idaho and

Washington agencies that funded student training. But business travel occupied a very small percentage of his time as it relates to his overall job duties. As a result, we would have minimal expense reimbursement documents, and they would not demonstrate “extensive” travel. Rather, they would demonstrate minimal business travel.

Letter dated April 2, 2003, from [Redacted], President and CEO, [Redacted].

The job description provided by the President of [Redacted] also confirms that “School Directors are responsible for the overall day-to-day and long-term administration and management of their school.” Among the specific job duties of the school director are:

1. Admission and enrollment of students;
2. Marketing and advertising of the program with the public, funding agencies and industry;
3. Leadership, management and supervision of the teaching staff;
4. Scheduling of students on a daily, weekly and monthly basis;
5. Ensuring the overall quality of the programs offered at the school;
6. Responsibility for attendance, testing, grading, and student files;
7. Invoicing of services rendered and the prompt collection of tuition, fees and charges;
8. Responsible and profitable financial management of the business, cash flow and revenue;
9. Implementation and enforcement of standards for state licensing, accreditation, and the professional transportation industry;
10. Career development of the professional staff;
11. Short and long range planning for the school;
12. Safety and welfare of employees and students;
13. Ensuring an honest, hard working and friendly work environment;
14. Maintenance of equipment; [and]
15. Job placement assistance and data tracking.

Job Description: School Director. It seems highly unlikely that [Redacted] could have performed these duties for a period of just over three years while spending only a *de minimis* amount of time at the [Redacted] truck driving school facility. In addition, it is noteworthy that “travel” is not listed as one of the primary functions of the School Director position.

Based on the information provided by [Redacted] former employer, the Tax Commission finds that the taxpayer was employed full-time at the [Redacted] school that he managed. While

there is little doubt that [Redacted] did some minimal amount of traveling to locations outside of Idaho as part of his employment duties, the Commission has been provided with no records to substantiate the amount of workdays the taxpayer actually spent outside of Idaho. As a result, the Commission finds that 100% of [Redacted] wages [Redacted] were earned from employment activity taking place within Idaho. Because this wage income was earned from services performed in Idaho, it is Idaho source income and is taxable by this state.

ORDER

WHEREFORE, the Notice of Deficiency Determination dated June 28, 2002, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following taxes and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$2,869	\$717	\$1,597	\$5,183
1996	2,568	642	1,215	4,425
1997	1,897	474	733	<u>3,104</u>
			AMOUNT DUE	<u>\$12,712</u>

Interest is calculated through July 31, 2003, and will continue to accrue at the rate set out in Idaho Code § 63-3045(6)(b).

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

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

DATED this _____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2003, 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:

[REDACTED]

Receipt No.
