

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO.17842
[Redacted],)	
)	DECISION
Petitioner(s).)	
_____)	

On November 24, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1996 through 1998 and 2000 through 2002 in the total amount of \$34,555.

On January 15, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather wanted to rely upon the record as it stands and any additional information the Tax Commission may request. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) selected the taxpayers for an audit of their residency and domicile after reviewing the Idaho income tax returns the taxpayers filed for the tax years 1999 through 2002. Mr. [Redacted] a former [Redacted] from the state of Idaho, and Mrs. [Redacted] filed joint Idaho income tax returns as nonresidents with no Idaho source income. The Bureau researched the Tax Commission's records and found that the taxpayers did not file Idaho income tax returns for the tax years 1996 through 1998. The Bureau sent the taxpayers a domicile questionnaire and requested other information to determine the taxpayers' connections with the state of Idaho. The taxpayers provided the requested information, and the Bureau determined that the taxpayers never abandoned their Idaho domicile. The Bureau

prepared returns for the tax years 1996 through 1998, adjusted the returns filed for the years 2000 through 2002, and sent the taxpayers a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that they believed their domicile had changed to [Redacted]. They stated the law was clear that they were required to file [Redacted] income tax returns since they lived in [Redacted] and worked in [Redacted]. The taxpayers stated their domicile changed when Mr. [Redacted] obtained a full-time position in [Redacted] and they purchased a house in [Redacted].

The matter was referred for administrative review, and the Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers chose to have the matter decided on the record, with the understanding that they would provide any additional information the Tax Commission deemed necessary to make its decision.

The Tax Commission reviewed the facts of the case and determined it was necessary to gather additional information from the taxpayers. The Tax Commission sent the taxpayers a letter asking extensive questions about the taxpayers' lives while Mr. [Redacted] was in [Redacted], while Mr. [Redacted] was employed with [Redacted], regarding the purchase and furnishings of the house in [Redacted], the taxpayers' social activities in [Redacted], their financial accounts, medical and dental care, their immediate and extended families, and the use of their [Redacted] property. The taxpayers responded with the additional information.

The Tax Commission reviewed all the information and came to the conclusion that the taxpayers never fully abandoned Idaho as their state of domicile. The statements the taxpayers made and the connections they maintained with Idaho made it clear that the taxpayers never intended to abandon Idaho and change their domicile. However, from the information gathered

and the responses of the taxpayers, it was apparent to the Tax Commission that there was information missing regarding the taxpayers' actual presence in Idaho.

Idaho Code section 63-3013(2) states,

(2) An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:

(a) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.

(b) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.

(c) During such period, the individual did 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.

(d) The individual did not, during such period, 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).

(e) The individual was not, during such period, employed on the staff of an elective officer in the legislative branch of the government of the United States; and

(f) The individual did not, during such period, claim Idaho as his tax home for federal income tax purposes.

(g) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

The taxpayers stated that, after the completion of his second term, Mr. [Redacted] found employment with [Redacted] as a Managing Director of the [Redacted]. It was a full-time position where Mr. [Redacted] served as a member of the executive committee and head of [Redacted]. They stated, "Our opportunities for visiting family in Idaho and using our [Redacted] home were somewhat limited by a small number of vacation days..." In addition to the taxpayers' statements was the Bureau's review of the taxpayers' itinerary from Mr. [Redacted] palm pilot records for the years 2000 to 2002. From that information and a statement from the

taxpayers that their visits to Idaho were similar for all the years, the Bureau determined the taxpayers did not meet the safe harbor provisions of Idaho Code section 63-3013(2).

The Tax Commission looked at that information and the circumstances surrounding the taxpayers being in [Redacted] and found the facts were inconclusive regarding Idaho's safe harbor provisions. Therefore, the Tax Commission went back to the taxpayers and asked them to elaborate on the time they spent in [Redacted] and [Redacted] during the first couple of years Mr. [Redacted] was with [Redacted].

The taxpayers stated Mr. [Redacted] [Redacted]ended on [Redacted]. He found employment with [Redacted] and stayed with the company for the next five years. Mr. [Redacted] employment with [Redacted] required extensive travel both domestic and international. The taxpayers stated that starting employees with [Redacted] received two/three weeks of vacation. They stated that during the first two years with [Redacted] they did not have extensive vacations. The taxpayers recalled spending Christmas in [Redacted] in 1994 then splitting Mr. [Redacted] vacation for the next two to three years with Mr. [Redacted] family in [Redacted] and Mrs. [Redacted] family in [Redacted]. The taxpayers stated that for the first two to three years after leaving Congress their employment did not allow for time at their [Redacted] residence.

These statements agree with statements made by the taxpayers' representative and an independent third party. All indicate that the time the taxpayers spent in Idaho for the first couple of years after Mr. [Redacted] [Redacted] was none to only a few days per year.

In considering all the available information and statements, which the Tax Commission deemed all creditable, the Tax Commission found it is reasonable and highly probable that the taxpayers did not exceed the limited number of days in Idaho that would disqualify them from

the safe harbor provisions of Idaho Code section 63-3013. As previously stated, the Tax Commission firmly believes the taxpayers' domicile remained with Idaho during the years in question. However, since the taxpayers spent very little time in Idaho during the years 1995, 1996, and possibly 1997, and did not spend more than 60 days in Idaho for any calendar year thereafter, the Tax Commission finds the taxpayers were not required to file Idaho income tax returns.

WHEREFORE, the Notice of Deficiency Determination dated November 24, 2003, is hereby CANCELLED.

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

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2004, 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.