

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED]) DOCKET NO. 17870
)
) DECISION
)
Protestants.)
_____)

On October 29, 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 additional income tax and interest for the taxable year 2000 in the total amount of \$1,765.

On December 22, 2003, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to submit additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2000 Idaho individual income tax return. The taxpayers filed their return as part-year residents of Idaho. The Income Tax Audit Bureau (Bureau) selected the taxpayers' 2000 return for the examination of the credit for taxes paid to Utah. The Bureau reviewed the credit and determined the taxpayers claimed a larger credit than they were entitled to claim. The Bureau adjusted the credit to the maximum allowable amount. The Bureau also found that the taxpayers claimed the full amount of moving expenses on their Idaho return. Since the taxpayers were part-year residents of Idaho in 2000, the Bureau adjusted the moving expenses claimed to the proportional amount allowed as provided in the Idaho income tax rules. In addition to these two adjustments, the Bureau found that the taxpayers had additional withholdings that were not claimed. The Bureau included the additional withholdings and sent the taxpayers a Notice of Deficiency Determination.

The Notice of Deficiency Determination stated there was additional tax and interest due for the taxable year 2000. The taxpayers responded to the determination with a check for the amount of the tax only and a letter stating that "The acceptance and deposit of this check acknowledges payment and resolution of the tax assessment." The Bureau returned the check to the taxpayers with a letter stating that, if they intended to appeal the Notice of Deficiency Determination, they needed to perfect their protest by January 27, 2004. The Bureau also told the taxpayers their check was not acceptable as a resolution of the assessment.

The taxpayers perfected their protest on January 22, 2004. They stated they believed the tax software they employed correctly prepared their tax return. They stated the Bureau's interpretation of their moving expense deduction was confusing and inconsistent with other tax criterion. They disagreed with the determination; however, they were willing to pay the tax the Bureau said was due but not the interest. The taxpayers believed their return was accurate and honest.

The Bureau referred the matter 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 did not respond, so a follow-up letter was sent. The taxpayers responded to the follow-up letter by providing additional information for the Tax Commission to consider.

The taxpayers stated the Bureau's determination of the tax owed appears to be overly stated and burdensome considering their overall residency status. The taxpayers stated their Idaho residency was less than three months because they purchased land in Utah and began construction of a new house. [Redacted] lived and worked in Idaho earning \$14,846 with \$709 of withholdings. [Redacted] lived and worked in Utah. The taxpayers stated it was inappropriate to

assert that Idaho had a right to tax the remainder of their income that was earned outside the state of Idaho. The taxpayers said a worst-case scenario is that Idaho could tax approximately \$36,600, which represents [Redacted]'s Idaho income and a quarter of [Redacted]'s income.

The taxpayers stated that twice they sent a check to the Bureau and both times the Bureau refused their payment. The taxpayers said they made the offers not because they agreed with the Bureau's interpretation, but because they wanted to close the matter. They believe the Bureau's insistence on obtaining an additional \$265 for interest is suspect and a perceptible squander of resources.

The taxpayers' 2000 Idaho income tax return was adjusted for the credit claimed for taxes paid to Utah and for the deduction they claimed for moving expenses. The taxpayers did not address either of these adjustments in the information they provided the Tax Commission. The taxpayers' argument was that Idaho was taxing more of their income than it should.

The taxpayers filed their income tax return stating that they were part-year residents of Idaho. They stated they were residents of Idaho for 11 months in 2000. On their Utah return, the taxpayers stated they resided in Utah for one month in 2000. Idaho Code section 63-3026A states that part-year residents of Idaho are required to report to Idaho their income from all sources while residing in Idaho. The taxpayers reported 11 months of income on their Idaho return. The Bureau and the Tax Commission agreed with that reporting. However, now the taxpayers claim their Idaho residency should be only three months.

The taxpayers stated they purchased land in Utah in March 2000 and began building a house. They stated that [Redacted] lived and worked in Idaho, and [Redacted] lived and worked in Utah. On the taxpayers' 2000 return, they claimed employee business expenses for travel away from home. These expenses were reported as [Redacted]'s expenses. If [Redacted] is

claiming expenses for travel away from home while living and working in Utah, where is the home he is away from? The Tax Commission believes [Redacted]'s home and domicile was in Idaho. Furthermore, it remained in Idaho until the taxpayers moved into their completed house sometime in late November or early December 2000. The Tax Commission does not believe the taxpayers abandoned their Idaho domicile until the date stated on their Idaho and Utah returns.

It is well established that everyone has a domicile somewhere. Equally, an individual's domicile persists until a new domicile is acquired. In re Estate of Cooke, 96 Idaho 48, 59, 524 P.2d 176 (1973). "The existing domicile, whether of origin or selection, continues until a new one is acquired, and the burden of proof rests upon the party who alleges the change." Bodfish v. Gallman, 378 N.Y.S. 2d 138, 141, 50 A.D.2d 457 (1976). The taxpayers' argument suggests that [Redacted]'s domicile changed to Utah before the time stated on their income tax return. Therefore, the burden of proof is on the taxpayers to show that his domicile did indeed change.

The taxpayers' only evidence of [Redacted]'s change of domicile is their statement that [Redacted] lived and worked in Utah. However, the employee business expenses claimed on their 2000 return contradict this. A change of domicile is shown by a preponderance of evidence showing the abandonment of the old and the acquiring of a new domicile. The taxpayers have not shown this; therefore, they have not met their burden of proof.

Since, at the time of filing their returns, the taxpayers reported a relational residency between Idaho and Utah, the Tax Commission is not inclined to make any changes to the income the taxpayers reported as allocated between Idaho and Utah. However, the Tax Commission did review the adjustments the Bureau made and found its computations accurate based upon the information presented. Therefore, the Tax Commission upholds the Bureau's adjustments.

The Bureau added interest to the taxpayers' tax deficiency. The taxpayers protested this addition because they believed their return was an accurate and honest return. Idaho Code section 63-3045 states that interest shall be added to deficiencies in tax. The Idaho Supreme Court in Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), stated,

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

Accordingly, the Tax Commission finds that interest was properly added. The taxpayers' offers for payment of tax only was a form of compromise. The adjustments to the taxpayers' return were merely mathematical computations and comparisons of what the taxpayers reported on their return. Consequently, the Bureau had no room for compromise in this matter. The Tax Commission finds that the Bureau took the correct action when it declined to accept the taxpayers' partial payment as a settlement.

WHEREFORE, the Notice of Deficiency Determination dated October 29, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$1,500	\$ 341	\$1,841

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

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

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

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 State mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
