

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17902
[Redacted],)	
)	DECISION
Protestant.)	
_____)	

On January 14, 2004, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 2000 in the total amount of \$3,471.

On February 11, 2004, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer's representative requested a telephone hearing, which was held on April 20, 2004. The Tax Commission, having reviewed the file, hereby issues its decision.

While issuing closing letters to the executor of an estate, the Income Tax Audit Bureau (Bureau) traced the personal representative fees deducted by the estate to the taxpayer. The Bureau researched the Tax Commission's records and found that the taxpayer had not filed an Idaho individual income tax return for the fees paid to her by the estate. The Bureau corresponded with the taxpayer but received very little information. The Bureau determined the taxpayer was required to file an Idaho income tax return, so it prepared a return for the taxpayer based upon the information available and sent her a Notice of Deficiency Determination.

The taxpayer's response to the Bureau's Notice of Deficiency Determination was that an Idaho return was filed in December 2003. The taxpayer provided a copy of the return, a copy of a statement of account from the Tax Commission, and payment of the balance due as stated on the statement of account. After reviewing this information, the Bureau and the taxpayer's representatives had further discussions in which the Bureau stated the Notice of Deficiency

Determination would remain unchanged. At this time the taxpayer's representatives protested the Notice of Deficiency Determination.

The issue to be determined in this case is the source of the income received by the taxpayer for the personal representative fees she received from an Idaho estate. The facts available in this case are as follows:

1. The taxpayer is a nonresident of Idaho; her state of residence/domicile is [Redacted]
2. The taxpayer received personal representative fees from her mother's estate.
3. The estate is an Idaho resident estate.
4. The taxpayer performed services for the estate both within and without Idaho.
5. The personal representative fees were deducted as an expense of the estate by the executor of the estate.
6. The taxpayer is not the executor of the estate.

Idaho Code section 63-3002 states that it is the intent of the Idaho legislature to impose a tax on the Idaho taxable income of nonresidents, which is the result of activity within or derived from sources within Idaho.

Idaho Code section 63-3026A provides for the computation of Idaho taxable income for nonresident individuals. It states in subsection (3)(a) that income shall be considered derived from or relating to sources within Idaho when the income is attributable to or resulting from, among other things, a resident estate.

The Bureau asserted that the receipt of personal representative fees from the estate was income attributable to or resulting from an Idaho source. The Bureau did not agree that the personal representative fees should be prorated for services performed both within and without Idaho, as the taxpayer reported on the return she filed.

The taxpayer claimed that approximately one-third of the fees was earned while performing services in Idaho for the estate. The other two-thirds were earned performing

services for the estate while she was at home in [Redacted]. The taxpayer cited longstanding Idaho case law that the "word sources when used in statutes dealing with sources of income as compensation for personal services has reference not to the person or entity paying for the services, but to the location where the services are performed." Barraclough v. State Tax Commissioner, 75 Idaho 4, 266 P.2d 371 (1954); Blangers v. State, Department of Revenue & Taxation, 114 Idaho 944, P.2d 1052 (1988). Therefore, in accordance with decisions of the Idaho Supreme Court, the taxpayer prorated the personal representative fees for the time she was in Idaho and outside Idaho.

Idaho Code section 63-3026A(3)(a) states that income is Idaho source income when it is attributable to or resulting from a resident estate. IDAPA 35.01.01.261 Income Tax Administrative Rule clarifies what is Idaho source income from estates. It states that all income of an estate distributed or distributable to a nonresident beneficiary is income derived from or related to sources within Idaho if the estate is treated as a resident estate. Therefore, when section 63-3026A(3)(a) talks about income from a resident estate, it is referring to distributions of the estate not expenses or deductions of the estate.

The estate reported the personal representative fees as a deduction on its estate tax return. The fees were not a distribution of the estate. Since the fees were not a distribution, they cannot be income attributable to or resulting from a resident estate. Consequently, the determination of Idaho source income to the taxpayer hinges upon the location where the services were performed. Barraclough v. State Tax Commissioner, Id.; Blangers v. State, Department of Revenue & Taxation, Id.

The taxpayer claimed that she performed a third of her services for the estate in Idaho and two-thirds in [Redacted]. The record contains nothing to refute this claim. The Tax Commission

is unaware of the services provided, but seeing that the taxpayer was not the executor of the estate, the Tax Commission finds the claim of the taxpayer reasonable.

Since the taxpayer performed services both within and without Idaho, only the income received for the services performed in Idaho are taxable by Idaho. Barracrough v. State Tax Commissioner, Supra.

WHEREFORE, the Notice of Deficiency Determination dated January 14, 2004, is hereby CANCELLED and the returned filed by the taxpayer is accepted as filed.

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]

Receipt No.
