

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

In the Matter of the Protest of )  
 ) DOCKET NO. 18790  
[Redacted] )  
 ) DECISION  
 )  
Petitioner. )  
 )  
\_\_\_\_\_ )

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated March 9, 2005. The Notice of Deficiency Determination asserted an additional liability for Idaho income tax, penalty, and interest in the total amount of \$88,306 for 1999.

This is a nonfiler case. The petitioner was, during 1999, a resident of [Redacted]. He sold property in Idaho resulting in a substantial gain. However, he did not file an Idaho income tax return reporting the gain from the sale of Idaho real property.

After the issuance of the notice of deficiency determination, the petitioner supplied additional information. In this material, the petitioner contended that he should be due a credit for taxes which he had paid the state of [Redacted]. Alternatively, he contended that, even if he is not entitled to such credit, he does not owe Idaho income tax in an amount exceeding \$16,448.

He objected to the assertion of the Idaho income tax because he had reported the gain on his [Redacted] resident income tax return and had paid the tax due to the state of [Redacted].

The petitioner asserts that he should be entitled to a credit for taxes paid to [Redacted]. Authority for the credit for taxes paid another state is set out in Idaho Code § 63-3029 (1999). It stated, in pertinent part:

**Credit for income taxes paid another state or territory.** (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.

The allowable credit is for residents of the state of Idaho. The statute does not provide for a credit for taxes paid another state for persons who are not residents of Idaho. The petitioner has not cited any authority for the proposition that he should be allowed such a credit. He seems to simply demand the credit because the enforcement of the statute as written might seem to him to be socially or economically unsound. The Idaho Supreme Court has addressed such a situation:

One of the amici curiae urges that ambiguous language of the statute should be so construed as to avoid socially undesirable or oppressive results, and that the construction contended for by the appellant would retard the economic development of the state. It may be agreed, where legislative language is ambiguous, and other rules of statutory construction do not control, the court should consider social and economic results. But we do not find the statutes involved to be ambiguous. In such case our duty is clear. We must follow the law as written. If it is socially or economically unsound, the power to correct it is legislative, not judicial. International Harvester Co. v. Wisconsin Dept. of Tax., 322 U.S. 435; Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1; Wanke v. Ziebarth Const. Co., 69 Idaho 64, 202 P.2d 384; State v. Village of Garden City, 74 Idaho 513, 265 P.2d 328.

John Hancock Mutual Life Insurance Co. v. Neill, 79 Idaho 385, 405 (1957).

The Commission finds no basis in law for the credit for tax paid another state to be allowed to a nonresident of Idaho. Therefore, the credit must be disallowed.

The petitioner has supplied information indicating that the tax due should be \$16,448, as opposed to the \$55,554 asserted by the notice of deficiency determination. This computation is based upon joint filing status. The Commission has reviewed the computations submitted and finds them to be accurate. Therefore, the amounts shown on the notice of deficiency determination must be modified.

WHEREFORE, the Notice of Deficiency Determination dated March 9, 2005, is hereby MODIFIED, and as so modified is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest (computed to August 31, 2006):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$16,448	\$4,112	\$6,860	\$27,420

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2006, 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.

[Redacted]

Receipt No.

[Redacted]

---