

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19972
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On November 17, 2006, the staff of the Automated Billing Unit of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing additional income tax, penalty, and interest for the taxable year 1999 in the total amount of \$10,192.52.

On January 18, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a hearing but later cancelled and chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer filed his 1999 Idaho individual income tax return on February 24, 2006. Since the taxpayer's return was for a year prior to the current processing year, the Revenue Operations Division (Division) had to manually process the taxpayer's return. When processing the taxpayer's return, the Division found that the taxpayer did not include a complete copy of his 1999 federal income tax return. The Division requested a complete copy of the taxpayer's federal return on two separate occasions. The taxpayer did not comply. The Division corrected the taxpayer's return based upon the information provided with the taxpayer's Idaho income tax return and sent the taxpayer a letter advising him of the changes made to his 1999 Idaho income tax return. The taxpayer did not respond. Therefore, the taxpayer's return was processed with the Division's changes.

Since the taxpayer had not been sent a Notice of Deficiency Determination, the Automated Billing Unit prepared a Notice of Deficiency Determination and mailed it to the taxpayer. The taxpayer protested the Notice of Deficiency Determination stating that during 1999 he worked in a foreign country. He also stated he did not know why Idaho was not pursuing his ex-wife for this year since she received his foreign earned income also.

The matter was referred for administrative review, and the Tax Commission sent the taxpayer a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer requested a hearing but, when the scheduled date and time arrived, he cancelled. The taxpayer asked that the Tax Commission send him a list of questions that he could respond to through the mail or via fax. The Tax Commission sent the taxpayer two lists of questions; the second developed from the responses of the first. Based upon those responses and additional information obtained from the Internal Revenue Service, the Tax Commission decided the matter.

The taxpayer stated that in May 1998 he began living and working in [Redacted]. This continued until January 2000 when he returned to the United States. During the taxpayer's stay in [Redacted], his ex-wife and children lived in [Redacted], Idaho. His children attended schools in [Redacted] and Idaho. His ex-wife worked in [Redacted].

Prior to leaving for [Redacted], the taxpayer lived and worked in [Redacted]. He worked for a [Redacted] company just north of [Redacted]. He lived in [Redacted] when he was working and lived in [Redacted] on his days off. He began living in [Redacted] in December 1989 and remained there until 1998. The taxpayer stated that he identified himself with the state of [Redacted]. He worked in [Redacted], he lived in [Redacted], and, when he left for [Redacted] he flew out from [Redacted]. About six months before the taxpayer left for

[Redacted], his ex-wife and kids began living in [Redacted], Idaho. The taxpayer stated during those months he stayed in [Redacted] on his days off. Before leaving for [Redacted], the taxpayer stated he was in [Redacted] for ten days or less.

The taxpayer stated he worked in [Redacted] for a total of 20 months. His general work schedule was six weeks working and 13 days off. During his time-off periods, the taxpayer stated he returned to the United States, specifically, Idaho to visit his family. The taxpayer stated he followed this schedule or routine throughout the 20 months he worked in [Redacted].

In January 2000, the taxpayer returned to the United States. On April 21, 2000, the taxpayer and his wife were divorced. In 2000, the taxpayer purchased an Idaho fish and game license, and in 2001, he acquired an Idaho driver's license. He stated that, when he returned from [Redacted], he decided to stay in Idaho.

[Redacted].

Idaho Code section 63-3002 states that the Idaho Income Tax Act is to be identical to the federal Internal Revenue Code relating to the measurement of taxable income, subject only to modifications contained in the Idaho law. Therefore, if the income is included or excluded from federal taxable income, it is included or excluded from Idaho taxable income unless there is a provision in the Idaho law that subtracts or adds the income to Idaho taxable income. Idaho State Tax Commission v. Stang, 135 Idaho 800, 25 P.3d 113, (2001). The taxpayer apparently elected to exclude his foreign earned income on his federal income tax return. The Idaho Code has no provision to add that income back for Idaho income tax purposes. Therefore, it was proper that the taxpayer's Idaho income tax return did not include his foreign earned income.

In addition to the income not being included in federal taxable income, the question also arises, was the taxpayer required to report that income to Idaho. Was the taxpayer a resident or

domiciled in Idaho during 1998? The information available suggests the taxpayer was not a resident or domiciled in Idaho. Prior to 1998, the taxpayer lived and worked for at least eight years in [Redacted]. It was not until six months before the taxpayer left for [Redacted] that his wife and children moved across the border to [Redacted], Idaho. The taxpayer stated that for those six months he spent his days off in [Redacted] rather than in [Redacted]. It does not appear that he changed his habits other than to visit his family in [Redacted]. The taxpayer did not obtain any Idaho privilege licenses until after he returned from [Redacted]. The taxpayer's only connection to Idaho was his wife and children, and he and his wife divorced shortly after he returned from [Redacted]

The information available does not support a finding that the taxpayer was a resident or domiciled in Idaho. It tends to favor the premise that the taxpayer was in Idaho, beginning in May 1998 until January 2000, for temporary or transitory purposes. Therefore, the Tax Commission found no legal basis for the taxpayer to report his foreign earned income to Idaho.

WHEREFORE, the Notice of Deficiency Determination dated November 17, 2006, is hereby CANCELLED.

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

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, 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.
