

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

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 20155 |
| [REDACTED],                     | ) |                  |
|                                 | ) | DECISION         |
| Petitioner.                     | ) |                  |
| _____                           | ) |                  |

On August 14, 2006, the staff of the Revenue Operations Division of the Idaho State Tax Commission sent a Notice of Correction to [Redacted] (taxpayers), proposing additional income tax for the taxable year 2005 in the amount of \$4,512.

On August 24, 2006, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has not provided any additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer filed a non-resident Idaho individual income tax return for the taxable year 2005. The taxpayer's return showed no income reportable to Idaho but attached to the taxpayer's return was a W-2 wage statement showing almost \$65,000 of wages attributable to work done in Idaho. Also attached to the taxpayer's return was a statement that the taxpayer's income was exempt by treaty. The Revenue Operations Division (Division) reviewed the taxpayer's return and determined, based upon the information available, that the taxpayer's return was incorrectly filed. The Division sent the taxpayer a Notice of Correction which the taxpayer protested.

The taxpayer stated his United States earnings were based on the number of days he worked in the United States. He reported all of his income to the United States and on his Canadian tax return. He stated he was present in the U.S. for 133 days during 2005 and that the U.S. – Canada treaty exempted his income under Article XV Paragraph 2(b).

The Division subsequently sent the taxpayer a Notice of Deficiency Determination and referred the matter for administrative review. The Tax Commission sent the taxpayer a letter discussing the methods available for redetermining a Notice of Deficiency Determination. The taxpayer did not respond. The Tax Commission sent the taxpayer a follow-up letter, but still received no response from the taxpayer. Therefore, the Tax Commission decided the matter based upon the information available.

In 2005, the taxpayer was employed by [Redacted] and apparently worked in Idaho for most if not all the time he was in the United States. [REDACTED] withheld and remitted to Idaho \$4,768 from the taxpayer's earnings. The taxpayer filed a Form 1040NR with the Internal Revenue Service stating that he was claiming benefits of the treaty between the U.S. and Canada that exempted his wages from U.S. taxation. The taxpayer cited Article XV (2)(B) of the U.S. – Canada Treaty and stated that the same exemption for federal purposes exempted his earnings from Idaho tax.

Article XV of the United States – Canada Income Tax Convention states,

ARTICLE XV

Dependent Personal Services

1. Subject to the provisions of Articles XVIII (Pensions and Annuities) and XIX (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in a calendar year in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) Such remuneration does not exceed ten thousand dollars (\$10,000) in the currency of that other State; or

(b) The recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in that year and the remuneration is not borne by an employer who is a

resident of that other State or by a permanent establishment or a fixed base which the employer has in that other State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a resident of a Contracting State in respect of an employment regularly exercised in more than one State on a ship, aircraft, motor vehicle or train operated by a resident of that Contracting State shall be taxable only in that State.

The taxpayer claimed that subparagraph 2(b) exempted his wages because he was in the United States/Idaho for less than 183 days. However, for the exemption of subparagraph 2(b) to be applicable, the individual's remuneration must not be borne by an employer who is a resident of that other State or by a permanent establishment or a fixed base which the employer has in that other State. The taxpayer's employer was [REDACTED], a U.S. based corporation that is not only a resident employer in the United States, it also has a permanent establishment or a fixed base in the United States.

In order for the exemption in subparagraph 2(b) to apply, both criteria of not exceeding 183 days in a calendar year and the employer not being a resident of the other Contracting State must be met. This is not the case here. Therefore, as provided in subparagraph 1 of Article XV, the remuneration may be taxed in the other Contracting State.

Since the U.S. – Canada Income Tax Convention does not exempt the taxpayer's earnings that he received while working in Idaho, the Tax Commission finds that the Division appropriately corrected the taxpayer's 2005 Idaho individual income tax return.

WHEREFORE, the Notice of Deficiency Determination dated April 25, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer receive the following refund of tax withheld:

| <u>YEAR</u> | <u>REFUND<br/>CLAIMED</u> | <u>REFUND<br/>ALLOWED</u> | <u>INTEREST</u>  | <u>TOTAL</u> |
|-------------|---------------------------|---------------------------|------------------|--------------|
| 2005        | \$4,768                   | \$ 256                    | \$ 2             | \$ 258       |
|             |                           |                           | LESS REFUND PAID | (258)        |
|             |                           |                           | BALANCE DUE      | \$ <u>0</u>  |

Since the Notice of Deficiency Determination reduced the refund claimed by the taxpayer, a DEMAND for payment of tax is unnecessary.

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2007, 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]

Registered No.