

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted]) DOCKET NO. 21597A
Petitioners.) AMENDED DECISION
_____)

PROCEDURAL BACKGROUND

[Redacted]. The Idaho State Tax Commission (Tax Commission) asked for data from [Redacted] regarding the [Redacted] as part of an audit in Docket #[Redacted] (regarding taxable years 1999 through 2003) and returns filed by the [Redacted] for tax years 2004 through 2006. Online information obtained from [Redacted] showed that the [Redacted] had a filing requirement for taxable year 1998. Because the [Redacted] had not filed an Idaho return for taxable year 1998, the Tax Commission issued a Notice of Deficiency Determination on October 21, 2008, for tax, penalty, and interest of \$12,945. The [Redacted] responded with a protest letter dated December 4, 2008. In response to a hearing rights letter dated December 29, 2008, the [Redacted] requested an informal hearing. An informal hearing was held by telephone with [Redacted] on March 19, 2009. This matter is now submitted for the issuance of a decision.

ISSUES, FACTS AND ANALYSIS

U.S. Tax Court Proceedings

[Redacted] provided the Tax Commission with the attached federal Tax Court ruling dated August 22, 2008. He claims that this ruling validates his position that his 1998 [Redacted] tax return showing zero taxable income is not frivolous so, therefore, it is a valid return.

[Redacted] argues that if he has no [Redacted] taxable income then he has no Idaho taxable income.

The ruling referred to by [Redacted] deals with the penalty for frivolous filing assessed by [Redacted]. The federal Tax Court ruled that [Redacted] return did not meet the requirements for this penalty.

In order to resolve the issues regarding the [Redacted] taxable years 1999 through 2006, the Tax Commission requested and, in January 2009, received from the U.S. Tax Court copies of an October 23, 2007, ruling regarding [Redacted]. See attached. According to this order, [Redacted] was liable for federal income tax as asserted by [Redacted] for 1998 through 2002. The ruling [Redacted] includes in his protest in this matter only relates to penalties under I.R.C. § 6702. The enforcement of penalties by the [Redacted] under I.R.C. § 6702 does not affect [Redacted] Idaho income tax liabilities. [Redacted] only provided the Tax Commission with the August 22, 2008, U.S. Tax Court ruling. However, both rulings together provide the complete picture.

Additionally, [Redacted] audit information available to the Tax Commission showed that the taxpayers had a [Redacted] of \$114,829. This income amount is the basis of the taxpayer's Idaho tax liability.

Residency

Idaho's income tax law states that a resident of this state is required to report and pay a tax on all of his or her taxable income regardless of the source. Idaho Code § 63-3002. Idaho Code § 63-3013 defines the term "resident:"

Resident. – (1) The term "resident," for income tax purposes, means any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in

this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Domicile is defined in the Tax Commission's Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." IDAPA 35.01.01.030.02 The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P. 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired.

[Redacted] claims that he was only a part-year resident in 1998. He admits that he owns a house in [Redacted], but he claims he only spent three months in Idaho in 1998, and because of this, he asserts that he was not an Idaho resident in 1998.

As [Redacted] indicates, the [Redacted] did own a home in Idaho in 1998. Mr. and [Redacted] filed an Idaho Individual Income Tax Return for taxable year 1997 claiming to be domiciled in Idaho. Idaho Department of Fish and Game records indicate that Mr. [Redacted] purchased an Idaho Resident Fish & Game License during taxable year 1999, and indicated he had been a resident of Idaho since June 1, 1995. Mr. [Redacted] maintained an Idaho driver's license during taxable years 1994 through 1999. Mr. [Redacted] has not provided an income tax return from another state to support his part-year residency status.

Based upon this information, the Commission finds as a matter of fact and law that [Redacted] domicile was in Idaho for taxable year 1998.

Statute of Limitations

Mr. [Redacted] asserts that the NODD requesting taxes for 1998 may be past the statute of limitations.

Pursuant to Idaho Code § 63-3068(d), “In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.” There is no statute of limitations for nonfiled returns per Idaho Code § 63-3068(d).

CONCLUSION

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson’s Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id. Since the Petitioners have failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau added interest, which will continue to accrue pending payment of the tax liability pursuant to Idaho Code § 63-3045(6), and penalty to the petitioners’ tax deficiency. The Tax Commission finds those additions appropriate as provided for in Idaho Code §§ 63-3045 and 63-3046. An amount of \$2,066.80 on Mr. [Redacted] account is being applied to the deficiency.

WHEREFORE, the Notice of Deficiency Determination dated October 21, 2008, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioners pay the following tax, penalty, and amended interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$6,810	\$1,703	\$4,746.85	\$13,259.85

Interest is calculated through December 9, 2009.

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

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

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, a copy of the within and foregoing AMENDED DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
