

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22404
[Redacted])	
)	DECISION
Petitioner.)	
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)	

On October 26, 2009, the Idaho State Tax Commission's (Commission) Revenue Operations Bureau (RO) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing additional income tax, penalty, and interest for taxable year 2008 in the total amount of \$1,039.43. The petitioner filed a timely petition for redetermination. On January 5, 2010, the petitioner was informed of her appeal rights. The Commission, having reviewed the file, hereby issues its decision.

In March 2009, the petitioner filed Idaho Form 43 Idaho Part-Year Resident & Nonresident Income Tax Return for taxable year 2009. The petitioner filed her Idaho return electronically, and on the return, the petitioner reflected both an amount due of \$1,238 and a refund in the amount of \$1,238. Mathematically, the figures reported on the Idaho income tax return result in a tax due of \$1,238, not a refund of said amount.

Shortly after the filing of the electronic return, the petitioner sent a \$300 payment to the Commission. The date on the petitioner's check was April 12, 2009. The \$300 payment apparently relates to an amended return the Commission subsequently received on June 24, 2009. The amended return reflects an amount due of \$300 and was signed by the petitioner on June 20, 2009. In the amended return, the petitioner removed income that she had previously treated as Idaho taxable income.

In response to the amended return, the RO issued the NODD dated October 26, 2009, effectively rejecting the amended return and asserting the petitioner owed additional tax, penalty, and interest totaling \$1,039.43.

The difference in the calculation of the petitioner’s Idaho tax liability between the filing of the original electronic return, the amended return, and the RO’s NODD for taxable year 2008 is illustrated in the following table:

Table 1	Federal	Idaho	Amended	Amended	RO	NODD
	Return	Form 43	Return Adj's.	Return	Adj.'s	10/26/09
Wages	\$13,073.00	\$0.00		\$0.00		\$0.00
IRA distributions	8,913.00	8,913.00		8,913.00		8,913.00
Unemployment	17,131.00	17,131.00	(17,131.00)	0.00	17,131.00	17,131.00
Student loan interest	(403.00)	(268.00)		(268)		(268.00)
Subtotal	\$38,714.00	\$25,776.00	(\$17,131.00)	\$8,645.00	\$17,131.00	\$25,776.00
Standard Deduction	(5,450.00)	(3,629.00)	2,412.00	(1,217.00)	(2,412.00)	(3,629.00)
Personal Exemption	(3,500.00)	(2,330.00)	1,548.00	(782.00)	(1,548.00)	(2,330.00)
Idaho Taxable Income	<u>\$29,764.00</u>	<u>\$19,817.00</u>	<u>(\$13,171.00)</u>	<u>\$6,646.00</u>	<u>\$13,171.00</u>	<u>\$19,817.00</u>
Idaho tax liability		\$1,248.00		\$290.00		\$1,248.00
Permanent building fund		10.00		10.00		10.00
Idaho grocery credit		(20.00)	20.00	0.00	(20.00)	(20.00)
Total Idaho tax		\$1,238.00		\$300.00		\$1,238.00
Withholdings		0.00		0.00		0.00
Net Tax Due		\$1,238.00		\$300.00		\$1,238.00
Amount Paid		0.00	(300.00)	(300.00)		(300.00)
Amount Due		<u>\$1,238.00</u>		<u>\$0.00</u>		\$938.00
Penalty						74.94
Interest through October 5, 2009						26.49
Total due per NODD						<u>\$1,039.43</u>

In the petition for redetermination, the petitioner asserts that she was a resident [Redacted] for taxable year 2008 and became a resident [Redacted] in 2009. The petitioner argues that Idaho is attempting to tax unearned income (retirement) and unemployment benefits [Redacted] and that both sources of income were the result of wages earned as a resident

[Redacted] and were not as a result of her “mere presence” in Idaho. The petitioner argues that she did not work in Idaho, had no earned income in or from Idaho, did not purchase real estate in Idaho, and did not vote in Idaho. Therefore, she cannot be taxed as a part-year resident in Idaho. The petitioner further argues that her presence in Idaho was merely to visit friends and look for employment. Unable to find employment, she moved [Redacted] where she now resides and works.

Idaho Income Tax Administrative Rule 040 provides guidance with respect to the definition of a part-year resident as follows:

040. PART-YEAR RESIDENT (RULE 040).

Section 63-3013A, Idaho Code.

01. In General. A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year.

a. An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho.

b. For the rules relating to the determination of an individual’s domicile, see Subsection 030.02 of these rules.

02. Temporary or Transitory Purpose. For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho.

a. The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho.

b. An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest.

c. Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest.

03. Place of Abode. An individual who owns a home in Idaho will not be treated as having a place of abode at that residence if the individual does not have the right to immediately occupy that residence.

a. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is leased to a third party for the entire taxable year. Since the individual does not have the right to immediately occupy the home, it is not treated as that individual's abode for purposes of determining his residency status.

b. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is offered for rent. For the first three (3) months of the taxable year the home is not rented and remains vacant. During the final nine (9) months of the taxable year the home is leased to a third party. The individual will be treated as having a place of abode in Idaho during the first three (3) months of the taxable year since the individual had the right to immediately occupy the home. If the individual is present in Idaho during the first three (3) months of the taxable year for other than a temporary or transitory purpose, that individual will be deemed to reside in Idaho.

On her original filed Idaho Form 43, the petitioner stated that she had spent 8 full months within Idaho; which she later changed to zero upon the filing of the amended Idaho Form 43. While in Idaho in June 2008, the petitioner obtained an Idaho drivers license, lived with her friend or friends, and engaged in efforts to seek Idaho employment. The petitioner's Idaho drivers license showed a [Redacted], Idaho, address, and that same address was used on her 2008 Federal Form 1099-R, Idaho electronically filed 2008 income tax return, [Redacted] 2008 nonresident income tax return, and [Redacted] personal checks.

The Commission finds that based upon the acquisition of an Idaho drivers license in June 2008, the use of the Idaho address on the 1099-R, tax returns, and checking account, it is unlikely that the petitioner spent zero months within Idaho and, therefore, the Commission finds that the petitioner's initial filing of an Idaho income tax return stating eight months in Idaho is a

better representation of the facts and circumstances than the filing of an amended Idaho income tax return reflecting zero full months within Idaho.

Since it has been held that the petitioner was in Idaho for more than ninety (90) days, it is presumed that the petitioner was in Idaho for more than a temporary or transitory purpose. Idaho Income Tax Administrative Rule 040.02.c.

As of the date of this decision, the petitioner has not met her burden of overcoming the presumption that she was in Idaho for other than a temporary or transitory purpose or provided any information that would resolve this case in the petitioner's favor for taxable year 2008. It is the petitioner's burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioner has not met this burden of proof showing that the NODD prepared by the RO is incorrect, the Commission upholds the RO's determination for these years.

In the NODD, the RO included interest on the amount of tax due in accordance with Idaho Code section 63-3045. Additionally, the RO included penalty in accordance with Idaho Code section 63-3033 and/or 63-3046; however, since the Commission cannot confirm how the penalty was actually determined under one or both of the Idaho code sections cited in the NODD, the Commission hereby waives the penalty.

WHEREFORE, the Notice of Deficiency Determination dated October 26, 2009, is hereby MODIFIED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$938	\$0	\$60	\$998

Interest is calculated through June 25, 2010, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

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

DATED this ____ day of _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.

Copy mailed to:

[Redacted]