

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23509
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On August 26, 2010, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable year 2009 in the total amount of \$1,888.

On October 28, 2010, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The Bureau received an inquiry from the [Redacted] County Assessor as to the residency status of the taxpayer for taxable year 2009. The Bureau researched the Commission’s records and found that the taxpayer stopped filing Idaho income tax returns beginning with taxable year 2010. The taxpayer filed a part-year resident return in taxable year 2005, resident returns for taxable years 2006 through 2008, and a part-year resident return for taxable year 2009. The Bureau did some additional research on the taxpayer and found the taxpayer had obtained an Idaho driver’s license in 2008 and had purchased Idaho property in 2007. The taxpayer applied for and received the homeowner’s exemption beginning in taxable year 2008.

Because information available to the Commission, along with that provided by the County, indicates the taxpayer may be domiciled in Idaho and, therefore, is required to file a resident return for taxable year 2009, the Bureau sent the taxpayer a letter asking her residency

status. The Bureau received a response from the taxpayer stating she left Idaho on April 1, 2009, and believes her 2009 Idaho income tax return was filed correctly as a part-year resident.

The Bureau gathered more information on the taxpayer and determined the taxpayer was required to file an Idaho resident income tax return for taxable year 2009. The Bureau prepared the resident return for the taxpayer based upon the information it gathered and sent the taxpayer a Notice of Deficiency Determination. The taxpayer protested the Bureau's determination stating that she moved from Idaho to Texas in April 2009.

The Bureau acknowledged the taxpayer's protest and informed her that her file was being transferred to the Legal/Tax Policy Division for further consideration and administrative review.

The Commission sent the taxpayer a letter that outlined the options available for redetermining a protested NODD. The taxpayer responded by telephone. She did not request a hearing but stated she was in the process of preparing an amended return for taxable year 2009 and would forward that as soon as it was complete.

The amended return was received by the Commission on January 31, 2011. The Idaho amended return was still a part-year return but reported a rental loss due to the taxpayer converting her Idaho home into rental property when she moved to Texas.

The taxpayer stated in her appeal letter, dated October 28, 2010, that she moved to Texas on April 1, 2009. She also stated that she did fly back to Idaho in 2010 to refinance her home as investment property and, since leaving Idaho in 2009, has purchased a home in Texas. The taxpayer admits to not yet acquiring a Texas driver's license or registering her vehicle in Texas.

Idaho Code section 63-3013(c) states:

- (c) An individual shall not be considered a resident, but may be considered a part-year resident, for income tax purposes during a period of absence from this state described as follows:

- (1) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.
- (2) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.

Idaho State Tax Commission Rule IDAPA 35.01.01.030.02 defines domicile as it pertains to the Idaho Income Tax Act. It states in pertinent part:

The term domicile means 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. . . .

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

The Bureau's preliminary research gave the indication that the taxpayer did not abandon Idaho as her state of domicile. However, based on all information contained in the file, the Commission found that the determination of the taxpayer's domicile is a moot point.

The taxpayer stated she left Idaho in April 2009 and has not returned except to refinance her Idaho property and celebrate her mother's birthday. According to the taxpayer, her stay in Idaho was for a little over a week. The Commission believes this kind of movement places the taxpayer within the safe harbor provisions of Idaho Code section 63-3013. Therefore, a determination of the taxpayer's domicile is not relevant in this matter.

For taxable year 2009, the Commission found that the taxpayer met the safe harbor provision of Idaho Code section 63-3013. The taxpayer was required to file an income tax return with the state of Idaho to report the income attributable to Idaho sources, which she did on Form 43.

THEREFORE, the Notice of Deficiency Determination dated August 26, 2010, is hereby CANCELLED.

The amended return submitted by the taxpayer will be forwarded for processing and subject to the normal review process.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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.

---