

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23048
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated September 28, 2010, issued by the Income Tax Audit Bureau proposing additional income tax and interest for taxable years 2007 through 2009 in the total amount of \$9,793. Petitioners disagreed that [Redacted] tax home did not remain in Idaho while he was temporarily working outside of Idaho and that the employee business expenses claimed were adequately substantiated.

**BACKGROUND**

Petitioners timely filed part-year resident Idaho income tax returns for 2007 and 2008. The Income Tax Audit Bureau (Bureau) selected Petitioners' 2007 and 2008 returns to examine [Redacted] ([Redacted]) part-year resident status. The Bureau sent Petitioners a domicile questionnaire, which Petitioners discussed with an auditor in the Tax Commission's [Redacted] office. Based upon the information Petitioners provided, the Bureau determined [Redacted] was domiciled in Idaho. The Bureau corrected Petitioners' 2007 and 2008 Idaho individual income tax returns to reflect an Idaho domicile and sent them a Notice of Deficiency Determination.

About the same time, Petitioners received a letter from the Tax Commission's Taxpayer Accounting Section (Taxpayer Accounting) questioning the residency status reported on Petitioners' 2009 Idaho individual income tax return. Based upon Petitioners' response,

Taxpayer Accounting changed Petitioners' 2009 Idaho income tax return to reflect an Idaho domicile and sent Petitioners a tax correction notice.

Petitioners protested the changes made by the Bureau and Taxpayer Accounting. Petitioners stated they were amending their [Redacted] income tax returns and would send corresponding Idaho amended returns for each year. Shortly thereafter, Petitioners filed amended Idaho individual income tax returns showing [Redacted] as a resident but also claiming away from home employee business expenses.

Since both the Bureau and Taxpayer Accounting were looking at the same issue, Taxpayer Accounting referred Petitioners' 2009 return and amended return to the Bureau to be considered and reviewed with Petitioners' 2007 and 2008 amended returns. The Bureau reviewed Petitioners' amended returns and asked Petitioners to document and substantiate the employee business expenses now claimed as away from home business expenses. Petitioners identified the jobsites where [Redacted] worked, explained his working relationship with his employer, and provided documents to substantiate his business expenses. The Bureau reviewed the information and determined [Redacted] employee business expenses were not allowable because [Redacted] did not work outside of his tax home. Furthermore, Petitioners' documentation of [Redacted] employee business expenses was lacking in the substantiation requirements of Internal Revenue Code section 274. Petitioners continued to disagree with the Bureau's findings, so the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners requested a telephone hearing wherein the following information was obtained.

[Redacted]. During the years in question, Petitioners lived in [Redacted], Idaho. Petitioners moved to [Redacted] in 1992 from California because work [Redacted] was scarce. [Redacted] worked for a number of years in and around the [Redacted] area. In 2006, because jobs in Idaho were getting scarce, [Redacted] was dispatched [Redacted]. For the next few years, [Redacted] worked relatively steady with [Redacted], through 2010. In the past, each time the union dispatched [Redacted] it was for a short-term job. During the years in question, it was no different. [Redacted] worked for [Redacted] on projects [Redacted] a total of five different jobs. The duration of the jobs was anywhere from three months to eleven months. [Redacted] had no knowledge of [Redacted] upcoming jobs. Other than the project [Redacted], all [Redacted] employment [Redacted] was through the union hall. [Redacted] never knew what job he would be called out to next or who he would be working for.

Petitioners stated every job [Redacted] went out on was a temporary job. Being a member of the union, different contractors would contact the union hall looking for a specific skilled worker. The union provided a list of workers and the [Redacted] could choose anyone or request a specific individual on the list. A union member could always reject employment, but Petitioners stated that during this time of economic downturn if you wanted to eat, you went where the work was. Petitioners stated it was not reasonable that they move the family every time [Redacted] worked out of town or out of state. However, Petitioners did state that when the work slows down or dries up entirely where they live, they move to the next location where the potential for work is greater.

## LAW AND ANALYSIS

Internal Revenue Code (IRC) section 162 provides for the deduction of all ordinary and necessary expenses paid or incurred in carrying on any trade or business. The IRC recognizes individuals as being in the trade or business of being an employee. Therefore, an individual, in the capacity of an employee, can deduct expenses incurred while fulfilling his duties as an employee. Personal living expenses are not deductible (IRC section 262), but in the case of traveling expenses incurred while away from home in the pursuit of a trade or business, IRC section 162(a)(2) allows a deduction.

Generally, a taxpayer's home, for purposes of IRC section 162(a)(2), is the location of the taxpayer's principle place of business or employment. Knight, TC Memo 1988-186, (1988). However, an exception to this rule exists for temporary employment away from the taxpayer's home. Peurifoy v. Commissioner, 358 U.S. 59, 60 (1958). The purpose of this exception is to mitigate the burden on the taxpayer of maintaining two places of abode because it is unreasonable to expect him to move his residence in the case of temporary employment. Tucker v. Commissioner, 55 T.C. 783, 786 (1971).

The question of whether [Redacted] employment was temporary or indefinite is one of fact, which Petitioners have the burden of proof. Peurifoy v. Commissioner, supra. The Tax Court in Holter v. Commissioner, TC Memo 1978-411, (1978), applied several subjective criteria in deciding whether a taxpayer's employment is temporary or indefinite. Its considerations were:

whether the taxpayer had a logical expectation that the employment would last for a short period, an assurance that the job itself would not extend beyond a reasonably brief duration, an inordinate duplication of living expenses, and enough financial, familial and social bonds to choose prudently to remain at his original residence, rather than uproot his family from their accustomed home and relocate them at the site of his present work.

Petitioners stated each of the jobs during the years in question were of short duration, less than eight months on average. When the project was completed, [Redacted] was back at the union hall looking for more work. Petitioners had no expectation that [Redacted] employment with a particular contractor would be for more than the job he was called to from the union. [Redacted] experience with union work was that he would be employed for a specific project, but even that employment could be terminated at the end of the day.

[Redacted] living accommodations while employed were temporary and mobile. Petitioners purchased a camper in 2006 that [Redacted] took to the various jobsites. The camper was parked in an RV park near the jobsites. [Redacted] lived in the camper during the work week and returned home [Redacted] most weekends. [Redacted] meals consisted of fast-food restaurants and grocery store purchases. [Redacted] living accommodations did not give any indication that Petitioners expected the jobs to be more than temporary. Knight, supra.

Petitioners lived [Redacted] beginning in 1992. From 1992 to 2006, [Redacted] worked in and around [Redacted]. It is safe to assume that during this 14-year period, Petitioners acquired financial, familial, and social bonds to the area; enough that it would be imprudent to uproot the family and move to a temporary job location.

Considering the factors discussed, the Tax Commission finds [Redacted] employment during the years 2007, 2008, and 2009 was temporary. Petitioners could not reasonably have been expected to move their family and residence for employment that Petitioners knew would last for a definite and short period of time. Therefore, [Redacted] living expenses that were incurred while away from home in pursuit of a trade or business are deductible pursuant to IRC section 162(a)(2).

However, in the alternative to employee business expenses being allowed by IRC section 162(a)(2), the Bureau stated Petitioners failed to substantiate the amount of employee business expenses claimed. Petitioners' documentation consisted of credit card statements, bank statements, purchase documents for the camper, and non-contemporaneous mileage written on blank calendars. The Bureau could not tie the documentation to the amounts Petitioners claimed on their returns.

IRC section 274(d) provides the substantiation requirements for claiming away from home expenses. It states:

**(d) Substantiation required.**

No deduction or credit shall be allowed—

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

(3) for any expense for gifts, or

(4) with respect to any listed property (as defined in section 280F(d)(4)), unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations. This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i) ).

The Tax Commission reviewed Petitioners' documentation and found it did not meet the strict requirements of IRC section 274(d) and the regulations thereunder. However, the Tax Commission was able to separate Petitioners' travel while away from home expenses in the

documentation provided from their personal living expenses. Therefore, the Tax Commission allowed the employee business expenses it could substantiate as Petitioners' employee business expenses.

In its review of Petitioners' documentation, the Tax Commission found that [Redacted] received per diem, travel, and other reimbursements while working away from home. These amounts were only partially accounted for in Petitioners' amended income tax returns. Since these reimbursements offset the cost of working away from home, the total of these reimbursements needs to be added to Petitioners' income or reduce the amount of employee business expenses claimed.

### **CONCLUSION**

Petitioners were residents of Idaho in 2007, 2008, and 2009; therefore, they were required to report their income from all sources to Idaho. [Redacted] worked outside of Idaho during these years on short-term temporary jobs. Petitioners were entitled to deduct non-reimbursed employee business expenses incurred [Redacted] was away from home. Petitioners were also required to account for all the expense reimbursements [Redacted] received for working away from home.

The Bureau added interest to Petitioners' Idaho tax liability. The Tax Commission reviewed the addition and found it appropriate as to the modified tax deficiency. *See* Idaho Code section 63-3045.

THEREFORE, the Notice of Deficiency Determination dated September 28, 2010, and directed to [Redacted] is AFFIRMED AS MODIFIED by this decision.

IT IS ORDERED that Petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$3,569	\$748	\$4,317
2008	2,247	327	2,574
2009	(143)	0	<u>(143)</u>
		TOTAL DUE	<u>\$6,748</u>

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.

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