

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23669
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

**BACKGROUND**

In taxable year 2007, [Redacted] (Taxpayer) filed an Idaho Individual Income Tax Return Form 40 as a resident taxpayer. During taxable year 2007, Taxpayer received retirement benefit payments from the [Redacted] amounting to \$50,578.00. Taxpayer subtracted this amount from her Idaho taxable income.

On December 17, 2010, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) disallowing the subtraction for amounts Taxpayer received from [Redacted]. The NODD asserted additional income, penalties, and interest. On January 5, 2011, Taxpayer protested the NODD on the basis the state of Oregon previously taxed her retirement benefits received from [Redacted]. In support of her position, Taxpayer submitted six payment stubs from [Redacted] evidencing Oregon withheld state tax from those payments. Taxpayer did not submit individual income tax returns showing she filed and paid tax to Oregon. Although Taxpayer believes income cannot be taxed twice, she did not put forth any evidence showing that the [Redacted] retirement benefits were actually taxed by Oregon.

The Commission has reviewed the relevant information contained in this file, is advised of its contents, and now issues its decision. For the reasons set forth below, the Commission affirms the NODD issued on December 17, 2010, with interest updated through March 1, 2012.

## LAW AND ANALYSIS

For residents of Idaho, Idaho Code § 63-3002 imposes a tax on Idaho taxable income wherever derived. Specifically, IDAPA 35.01.01.250.02 (Income Tax Administrative Rules) states “all income earned or received by an individual who resides in or is domiciled in Idaho is subject to Idaho income taxation without regard to the source of the income.” A “resident” for Idaho’s purposes includes any individual who (a) is domiciled in the state for the entire taxable year or who (b) maintains a place of abode in Idaho for the entire taxable year and spends more than two hundred and seventy days (270) in Idaho in the aggregate. “Idaho taxable income” means federal taxable income (as determined under the Internal Revenue Code) as modified by the adjustments required under Idaho law. Idaho Code §§ 63-3011B and 63-3011C.

Taxpayer does not dispute she is an Idaho resident for income tax purposes. Taxpayer does dispute Idaho’s right to tax the amounts received from [Redacted] because Oregon previously taxed those amounts. The Commission is not convinced. Taxpayer puts forth no legal basis evidencing the prohibition of double taxation on her retirement benefits.

Whether Oregon previously taxed Taxpayer’s retirement benefits is not relevant to Idaho’s imposition of income tax on its residents. “Domicile itself affords a basis for such taxation.” *New York ex rel. Cohn v. Graves*, 300 U.S. 308 (1937); as cited in Idaho State Tax Commission v. Stang, 135 Idaho 800, 803, 25 P.3d 113, 116 (2001). In *Stang*, the Idaho State Tax Commission included amounts received from an IRA in the Idaho resident taxpayers’ taxable income for taxable year 1995. From 1982 through 1986, the taxpayers resided in California, made contributions to an IRA, and deducted those amounts from their California taxable income. The state of California denied the deduction. Consequently, the taxpayers paid California income tax on the amounts contributed to the IRA during those years. Thus,

according to the taxpayers, Idaho was prohibited from taxing the distribution received in 1995 because California previously taxed those amounts. The Idaho Supreme Court upheld the tax and denied the taxpayers' constitutional challenges. The Court held that domicile was sufficient grounds for Idaho to impose an income tax on the IRA distribution. The mere fact another state taxed amounts included in a resident's income will not preclude Idaho from asserting a tax on the same income of its residents. *Id.*

Finally, it is well settled in Idaho that an NODD issued by the Idaho State 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 taxpayer to show that the tax deficiency is erroneous. Id. Taxpayer did not set forth any legal basis to support her conclusion that the NODD erroneously assessed additional tax, penalties, and interest on the retirement benefits. Therefore, Taxpayer has not met her burden of proving the NODD was incorrect.

### **CONCLUSION**

The amounts Taxpayer received from [REDACTED] while she was a resident of Idaho are taxable income under the Idaho Income Tax Code. Although Oregon withheld taxes on these amounts and may have applied a tax, Idaho is not prohibited from assessing an income tax on Taxpayer for the retirement benefits received from [REDACTED]. Idaho law does not provide a deduction, exemption, or tax credit in this situation. Therefore, Taxpayer must pay Idaho income tax on the amounts received from [REDACTED].

THEREFORE, the NODD dated December 17, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED Taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$3,903	\$195	\$775	\$4,873

Interest for the above deficiency is calculated through March 20, 2012.

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

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

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

IDAHO STATE TAX COMMISSION

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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.

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