

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25897
)
)
Petitioners.) DECISION
)
_____)

On May 30, 2013, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] (taxpayers), proposing individual income tax, penalty, and interest for taxable year 2008 in the total amount of \$4,130.

The taxpayers filed a timely appeal and petition for redetermination. They did not request a hearing. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

Commission records, and information available to the Commission, indicate that the taxpayers appear to be Idaho residents who meet the Idaho individual income tax filing requirements. The Bureau contacted the taxpayers for an explanation of why their 2008 Idaho return had not been filed. The taxpayers responded, stating they were not required to file a return in Idaho because, while they did build a home in Idaho in 2008, they continued to maintain a home and reside in [Redacted] until 2009. Questions concerning the taxpayers' residency in 2008 remained; therefore, the Bureau requested the taxpayers complete a Residency and Domicile questionnaire, which they did. The Bureau reviewed the information provided on the questionnaire and conducted additional research, which included obtaining information from the Idaho Transportation Department, [Redacted] County Assessor's office, the [Redacted] Department of Revenue and the [Redacted]. Based on this information, the Bureau determined the taxpayers were

required to file a part-year Idaho individual income tax return for taxable year 2008. The Bureau prepared a return for the taxpayers and sent them an NODD.

The taxpayers appealed the NODD, stating that they did not agree with the amount of income used to determine the tax liability to the state of Idaho. The taxpayers stated the income shown on the NODD was K-1 income earned from their business, which was located in [Redacted]. The taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3013 defines a resident for income purposes as an 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.

Idaho Code § 63-3013A describes a “part-year resident” to mean an individual who is not a resident and who has either changed his domicile from or to Idaho during the taxable year or who has resided in Idaho for more than one day during the taxable year. That code provision goes on to provide that:

An individual shall be deemed to reside within Idaho for any calendar day in which that individual has a place of abode in this state and is present in this state for more than a temporary or transitory purpose. Presence for any fraction of a calendar day shall be counted as a whole day.

Idaho Income Tax Administrative Rule 040 also 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.

The taxpayers applied for, and received, the homeowner's exemption on their Idaho property in 2008, stating on the application a purchase date of March 18, 2008, and an occupancy date of March 19, 2008. The taxpayers registered and titled vehicles in Idaho in April, 2008 and [Redacted] applied for, and received, a resident Idaho Fish and Game license on July 23, 2008, indicating a beginning residence date of January 8, 2008. Available information and the taxpayers' own statements make it clear; the taxpayers were not domiciled in Idaho for the entire taxable year of 2008, nor did they maintain an abode in Idaho for the entire year of 2008. The information also indicates the taxpayers were in Idaho for more than a temporary or transitory purpose. For taxable year 2008, the taxpayers meet the definition of part-year Idaho residents for income tax purposes and are therefore required to file.

The taxpayers apparently agreed with the requirement to file a part-year Idaho return, as a Form 43 was submitted with their appeal letter. The return showed the taxpayers each spent one full month in Idaho and attributed a small portion of income to Idaho.

Idaho Code § 63-2026A(2) states that for part-year resident individuals, trusts or estates, the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho.

That code provision goes on to provide that income shall be considered derived from, or relating to, sources within Idaho when such income is attributable to, or resulting from, any

business, trade, profession, or occupation conducted or carried on in this state.

Idaho Income Tax Administrative Rule 250.01 states that all income earned or received from sources within Idaho is subject to Idaho income taxation. Administrative Rule 250.02 specifies that 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.

As part-year residents for 2008, the taxpayers were subject to Idaho income tax on the income they earned or received while living in Idaho, without regard to the source of the income. The K-1 income received by the taxpayers while they were part-time residents was subject to Idaho tax, just as the compensation they received while residing in Idaho was subject to Idaho tax.

Idaho Income Tax Administrative Rule 255.02 directs the computation of exemptions and deductions allowable for part-year resident individuals to be determined by multiplying the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(k), Idaho Code, by the proration percentage. The proration percentage is calculated by dividing Idaho adjusted income by the total adjusted income. The Bureau correctly computed the taxpayers' deductions and exemptions on a prorated basis.

Idaho Code § 63-3029 provided for a credit for taxes paid in another state. That section also provides that “[t]o substantiate the credit allowed under this section, the state tax commission may require a copy of any receipt showing payment of income taxes to another state or a copy of any return or returns filed with such other state or territory, or both.” The taxpayer did not provide a copy of the return they filed with the state of [Redacted], but to be fair and equitable, the Bureau requested a copy of the return from [Redacted] through an exchange agreement between the states.

Based on the information provided by [Redacted] Department of Revenue, the Bureau calculated, and allowed, a credit for taxes paid to [Redacted], thereby reducing the amount of tax due.

THEREFORE, the Notice of Deficiency Determination dated May 30, 2013, and directed to [Redacted] and [Redacted] is hereby AFFIRMED AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$2,880	\$720	\$598	\$4,198

Interest is calculated through April 18, 2014.

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

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

DATED this _____ day of _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
