

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 38959
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On July 9, 2014, the staff of the Revenue Operations (RO) Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) reducing the amount of refund claimed for taxable year 2013 in the total amount of \$3,280.

A timely appeal and petition for redetermination was submitted by the taxpayer. The taxpayer did not request a hearing but did provide substantial documentation with his appeal for the Commission’s consideration. The Commission, having reviewed the file, hereby issues its decision.

The taxpayer is a citizen of [Redacted]. He is a [Redacted] at [Redacted] who received a W-2 for taxable year 2013 reporting \$[Redacted] in wages. The taxpayer filed a resident Idaho income tax return for taxable year 2013 with a filing status of Married, filing separate and included a copy of his federal return which included schedule Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), which contained statements explaining that the income received in 2013 was exempt from taxation under Article [Redacted] of the US-[Redacted]income tax treaty. RO reviewed the return information but before processing the return, attempted to gather additional information from the taxpayer through a Request for Information letter. The taxpayer failed to respond to the request for information. (Determined later to be because of an address error on the Commission’s part). Therefore, RO made an

adjustment to the taxpayer's return to include the excluded income and sent him a Tax Computation letter. The taxpayer responded, objecting to the adjustment to his return, stating that even though he is a resident alien for income tax purposes, his income is still exempt under Article [Redacted] of the US-[Redacted] treaty. RO then sent him an NODD and forwarded his file to the Legal/Tax Policy Division for administrative review.

The Commission reviewed the matter and sent the taxpayer a letter giving him two options for having the NODD redetermined. The taxpayer responded, but did not request an informal hearing. The taxpayer stated in his response that he believed the documents provided in response to the Tax Computation letter adequately substantiated his position and were sufficient. Therefore, the Commission decided the matter based upon the information available.

The treaty between the United States of America and [Redacted] was drafted for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and entered into force on January 1, 1987. Article [Redacted] of the treaty states:

Teachers, Professors and Researchers

An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or other accredited educational institution or scientific research institution in the first mentioned Contracting State shall be exempt from tax in the first mentioned contracting State for a period not exceeding three years in the aggregate in respect of remuneration for such teaching, lectures or research.

The Treasury Department Technical Explanation of the Agreement, which reflects policies behind particular provisions as well as understandings reached with respect to the

interpretation and application of the Agreement, in addition to the language above, also references the “savings clause”. It states:

“This article is excepted from the “savings clause” of paragraph 2 of the Protocol, so its benefits are available to persons who otherwise qualify even if they become U.S. residents.”

Paragraph 2 of the Protocol states:

Notwithstanding any provisions of the Agreement, the United States may tax its citizens. Except as provided in paragraph 2 or Article 8, paragraph of Article 17, and Articles 18,19,20,22,23,24 and 26 of this Agreement, the United States may tax its residents (as determined under Article 4).

The taxpayer filed Idaho income tax returns for taxable years [Redacted], each year [Redacted] reported to him by [Redacted] under the US-[Redacted] income tax treaty. The taxpayer stated in his appeal letter that in 2013, he passed the substantial presence test, meaning that for tax purposes, he is a resident alien. Generally, once you become a resident alien of the United States, you lose any tax treaty benefits that relate to your income. However, many tax treaties, the U.S.-[Redacted] being one, have exceptions to the savings clause, which may allow individuals to continue to claim certain treaty benefits after becoming a resident alien. In the present case, the taxpayer was relying on this exception to the savings clause in the treaty. However, on November 24, 2010, a Competent Authority Agreement (CCA) was entered into by the competent authorities of the United States of America and the [Redacted] with regards to the application of Article 19 of the U.S.-[Redacted] income tax treaty. The CCA, in relevant part states:

It is understood that the three-year exemption period begins to run from the first day the individual enters the first-mentioned Contracting State (hereinafter referred to as the “host state”) for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or other accredited educational institution or scientific research institution (the “entry date”). It is agreed that if an individual to whom Article [Redacted] applies is present in the host state for the primary purpose of teaching, giving lectures, or conducting

research for more than three years following the entry date, then the host state may begin to tax the individual's remuneration for teaching, giving lectures or conducting research starting with the first day of the fourth year. Such an individual's remuneration for the first three years will not lose its host state exemption.

While the original treaty may have allowed the taxpayer to exempt the income he earned in taxable year 2013 as a [Redacted] at [Redacted], the CCA clearly states that any remuneration received after the three-year period expires is taxable by the host state.

THEREFORE, the NODD dated July 9, 2014, and directed to [Redacted], is hereby AFFIRMED and MADE FINAL.

Since the notice only reduces the taxpayer's refund, no demand for payment is made or necessary.

An explanation of the taxpayer's 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.
