

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

In the Matter of the Protest of )  
 )  
REDACTED, ) DOCKET NO. 39245  
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Petitioner. ) DECISION  
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Redacted (Petitioner) protested the Notice of Deficiency Determination issued by the Taxpayer Accounting Section (Taxpayer Accounting) of the Revenue Operation Division of the Idaho State Tax Commission asserting additional income tax and interest for taxable year 2013 in the total amount of \$1,721.02. Petitioner disagreed that he owed any additional income tax to Idaho. The Tax Commission having reviewed the file hereby issues its decision.

**BACKGROUND**

Petitioner filed a non-resident Idaho individual income tax return for taxable year 2013. Petitioner reported zero income reportable to Idaho on that return. During processing, Petitioner’s return was identified as a return with a potential error. Taxpayer Accounting reviewed Petitioner’s return and found Petitioner had W-2 earnings reported as Idaho source income that Petitioner was not reporting as Idaho income. Taxpayer Accounting sent Petitioner a letter asking about the W-2 earnings, Petitioner’s residency status, and his income sources. Petitioner did not respond, so Taxpayer Accounting corrected Petitioner’s 2013 Idaho income tax return and sent Petitioner a notice that his return had been changed and the amount of additional tax due as a result of the change.

Petitioner responded by completing and returning Taxpayer Accounting’s questionnaire. He later provided a letter from his employer and a copy of Redacted form 673 – Statement for Claiming Exemption From Withholding on Foreign Earned Income Eligible for the Exclusion(s)

Provided by Section 911. Both the letter and the form stated Petitioner was in Redacted in 2013 and that he expected to be present in and maintain his tax home in Redacted for a 12-month period that would qualify him for the foreign earned income exclusion.

Taxpayer Accounting acknowledged Petitioner's responses as a protest of the change made to Petitioner's 2013 Idaho income tax return. Taxpayer Accounting sent Petitioner a Notice of Deficiency Determination and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a hearing rights letter that discussed the methods available for redetermining protested tax changes. Petitioner asked for a telephone hearing which was held on September 4, 2015. During the hearing Petitioner provided the following additional information.

In 2008, after serving in the Redacted Petitioner came to Idaho to visit a cousin. It was at that time Petitioner decided Idaho would be his home. However, it was not until 2011 that Petitioner moved to Idaho. Petitioner was schooled as a welder and lived in Redacted prior to moving to Idaho. Petitioner stated he worked as a contractor for a short time when he was offered a job overseas in 2012. Petitioner began working overseas on January 29, 2012, for Redacted. Petitioner later transferred to Redacted while overseas in 2013. Petitioner stated he took the job overseas because the money was good.

Petitioner stated that when he left Idaho in 2012 he never came back to the United States until December 24, 2013. Petitioner stated his employment contracts allowed him a certain amount of vacation time but he only took two weeks in 2012 and two weeks in 2013. In 2012, Petitioner vacationed in Redacted and in 2013 he vacationed in Redacted. Petitioner stated he only took two-week vacations so that at the end of his contracts his employer would cash him out of his remaining accrued vacation.

When Petitioner ended his overseas employment he returned to Idaho. Petitioner was unemployed and drew unemployment compensation from Colorado, since that was the state where his overseas employers were based. However, Petitioner did not stay in Idaho. Petitioner stated he traveled around the United States visiting friends and Redacted from December 24, 2013, to September 14, 2014. While traveling, Petitioner met a girl in Redacted that changed his plans for living in Idaho. On September 14, 2014, Petitioner moved to Redacted where he and his girlfriend had a baby, and where he enrolled in college. Petitioner stated he became a Redacted resident and now has a Redacted driver's license. Petitioner has not been back to Idaho since he left after his return from overseas.

#### **LAW AND ANALYSIS**

As the Tax Commission reviewed this case, it found there were two issues that needed to be addressed, Petitioner's residency status and the foreign earned income exclusion. Taxpayer Accounting assumed Petitioner had a filing requirement with Idaho since Petitioner filed a return and there was a W-2 reporting Idaho wages. However, after obtaining more facts from Petitioner, the Tax Commission is not convinced Petitioner had a filing requirement with Idaho.

Petitioner began filing Idaho individual income tax returns with the taxable year 2011. Petitioner filed part-year resident/non-resident returns for each of the taxable years 2011, 2012, and 2013. Taxpayer Accounting reviewed Petitioner's 2013 Idaho return and found it odd that Petitioner had W-2 wages reported to Idaho; however, Petitioner claimed it was not Idaho source income. When Petitioner did not respond to Taxpayer Accounting's request for information letter, Taxpayer Accounting determined the wages should be reported to Idaho and corrected Petitioner's 2013 Idaho income tax return.

Petitioner left Idaho on January 29, 2012 and has not been back to Idaho, except for a few days in December 2013. This being the case, Petitioner is a prime candidate for Idaho's resident safe harbor provision. Idaho Code section 63-3013 states in pertinent part,

An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:

(a) 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.

(b) 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.

(c) During such period, the individual did not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year.

(d) The individual did not, during such period, hold an elective or appointive office of the government of the United States (other than the armed forces of the United States or career appointees in the United States foreign service).

(e) The individual was not, during such period, employed on the staff of an elective officer in the legislative branch of the government of the United States; and

(f) The individual did not, during such period, claim Idaho as his tax home for federal income tax purposes.

(g) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

Petitioner clearly met the initial period of absence by being in a foreign country or countries from January 29, 2012, through December 24, 2013. Additionally, Petitioner did not maintain a permanent place of abode in Idaho nor has he been present in Idaho for more than 60 days in a calendar year since he left Idaho in 2012. In fact, it now appears that Petitioner abandoned Idaho as Redacted state of domicile and acquired Redacted in September 2014.

Seeing that Petitioner met the requirements of Idaho Code section 63-3013, Petitioner was considered a part-year resident of Idaho in both 2012 and 2013 even though his domicile was Idaho. Petitioner should have only reported his Idaho source income to Idaho in 2012 and 2013.

The W-2 that started the inquiry was from Petitioner's employer, Redacted. Petitioner provided a letter from Redacted that stated Petitioner was only employed by Redacted. It is unknown why Redacted produced a W-2 reporting a portion of Petitioner's Redacted wages as Idaho wages when it is clear Petitioner was not in Idaho when the wages were earned.

Regardless of the W-2 produced by Redacted the evidence presented shows Petitioner met Idaho's safe harbor provisions and as a result Petitioner was only required to report his Idaho source income to Idaho. Petitioner's foreign earned income is not Idaho source income. Consequently, Petitioner was not required to report his foreign earned income to Idaho, and since Petitioner was not required to report his foreign sourced income to Idaho, the foreign earned income exclusion is a non-issue for Idaho income tax purposes and need not be addressed.

### **CONCLUSION**

Petitioner became a resident of Idaho in 2011. Petitioner left Idaho in the beginning of 2012 for employment in Redacted that continued until the end of 2013. Petitioner was not married, he Redacted had no permanent abode in Idaho, nor was he present in Idaho for 60 days after being absent for a consecutive 15-month period. Petitioner qualified for Idaho's safe harbor.

Seeing that Petitioner met Idaho's safe harbor provision, the Tax Commission finds Petitioner was not required to report his foreign earned income to Idaho. Therefore, Taxpayer Accounting's determination is reversed.

THEREFORE, the Notice of Deficiency Determination dated October 20, 2014, and directed to Redacted is CANCELLED.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2015, 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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