

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-142-083-584
[Redacted] ,)	
)	
Petitioner.)	DECISION
<hr style="width: 40%; margin-left: 0;"/>)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated June 30, 2015, issued by the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission asserting income tax, penalty, and interest for taxable years 2009 and 2010 in the total amount of \$6,082. Petitioner disagreed that he did not file a 2009 Idaho individual income tax return and he disagreed that he was required to file an Idaho income tax return for taxable year 2010. The Tax Commission having reviewed the file hereby issues its decision.

BACKGROUND

The Bureau found that Petitioner did not file Idaho individual income tax returns for taxable years 2009 through 2011. The Bureau gathered information from third party sources and from the information provided to the Tax Commission as provided in the Idaho Code. The Bureau determined Petitioner had sources of income in each of the identified years in excess of Idaho's filing requirements as stated in Idaho Code section 63-3030.

The Bureau sent Petitioner a letter asking about his requirement to file the missing income tax returns. Petitioner did not respond. The Bureau prepared returns for Petitioner based upon the information available and sent him a Notice of Deficiency Determination for taxable years 2009 and 2010. Since the information available indicated tax year 2011 would result in an out of statute refund, the Bureau did not include it in the Notice of Deficiency Determination.

Petitioner protested the Bureau's determination stating he filed his 2009 Idaho income tax return while he was living in Thailand. Petitioner stated further that he was not required to file a 2010 Idaho income tax return because he lived the full year in Thailand.

The Bureau acknowledged Petitioner's protest and asked Petitioner to provide a copy of his 2009 Idaho income tax return, evidence of mailing, and to complete a residence/domicile questionnaire. Petitioner completed and returned the questionnaire, but did not provide the other documentation. The Bureau reviewed the questionnaire and determined Petitioner was not required to file an Idaho income tax return for taxable year 2010. The Bureau sent Petitioner a letter cancelling the Notice of Deficiency Determination as it applied to taxable year 2010 and stating that the matter for taxable year 2009 had been referred for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing which was held on January 28, 2016. During the hearing Petitioner provided the following additional information.

Petitioner stated **[Redacted]** in September 2009 and moved back to Thailand taking **[Redacted]**. Petitioner stated he followed **[Redacted]** to Thailand to **[Redacted]**. Petitioner stated **[Redacted]**, so in order for him to **[Redacted]** to Thailand, he needed to take a distribution from his retirement savings. Petitioner stated he withdrew \$^(Redacted) from his retirement account to get to Thailand.

Petitioner's efforts to **[Redacted]** divorced him in October 2009. Petitioner stated **[Redacted]**.

Petitioner stated that he took another \$^(Redacted) plus from his retirement account while in Thailand

for living expenses and costs associated with the **[Redacted]**. Petitioner stated he stayed in Thailand until the first part of May 2011.

Petitioner stated he filed both his 2009 federal and state income tax returns while he was in Thailand. Petitioner stated he went to Western Union to purchase money orders to pay the tax he owed and then mailed both returns a few days after his son's birthday, which was **[Redacted]**. Petitioner stated he did not have the receipts for the money orders and he did not have copies of his federal or state income tax returns.

LAW AND ANALYSIS

Idaho Code section 63-3002(1) states the intent of the Idaho legislature with regard to the Idaho Income Tax Act. It states in pertinent part:

[T]o impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state.

Idaho Code section 63-3013 defines an Idaho resident as an individual who is domiciled in Idaho for the entire taxable year or who maintains a place of abode in Idaho for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state.

Idaho Code section 63-3013(2) states that an individual shall not be considered a resident, but may be considered a part-year resident if he is absent from this state for 445 days in a consecutive fifteen month period. Petitioner stated he left Idaho in September 2009. Up to that time, Petitioner worked in Idaho for **[Redacted]**. Petitioner stated he did not return to Idaho until May 2011, well past the fifteen months required in Idaho Code section 63-3013(2) to be considered a part-year resident for 2009 and a nonresident for 2010. Therefore, as a part-year

resident Petitioner was required to file and report his income from all sources while a resident and from Idaho sources while a non-resident of Idaho.

It is clear that Petitioner received wages as a part-year resident of Idaho. What is less clear is when Petitioner actually received the distributions from his retirement accounts. Petitioner stated he took two distributions, one to travel to Thailand and the other to pay for the legal expenses of his divorce and custody of his son. Petitioner stated his wife cleaned out their bank account when she left. Therefore, it is reasonable that the first distribution Petitioner took from his retirement account was received while he was in Idaho to cover the cost of traveling to Thailand, and the second distribution was received in Thailand for the legal expenses incurred there. Therefore, only the distribution Petitioner received while in Idaho is reportable on Petitioner's 2009 Idaho income tax return.

Petitioner stated he filed, paid, and mailed his 2009 federal and state income tax returns from Thailand. However, Petitioner could provide no evidence he prepared income tax returns, let alone mailed them and paid his tax. The return the Bureau prepared for Petitioner treated Petitioner as a full-year resident including all Petitioner's retirement distributions as taxable by Idaho. But as previously stated, Petitioner met Idaho's safe harbor provision for residents living outside of Idaho; therefore, the return the Bureau prepared overstates Petitioner's Idaho taxable income.

Since Petitioner could not provide a copy of the 2009 return he mailed from Thailand, the Tax Commission hereby modifies the return prepared by the Bureau to reflect Petitioner's part-year resident status. In addition, because Petitioner's son lived with Petitioner up to the son's departure to Thailand in September 2009, the Tax Commission allowed Petitioner an additional dependent exemption deduction.

CONCLUSION

Petitioner was required to file an Idaho individual income tax return for taxable year 2009. Petitioner was unable to produce a copy of the return he stated he mail or evidence of the tax he stated he paid. Consequently, the Tax Commission looked to the return the Bureau prepared for Petitioner. The Tax Commission found the Bureau's return did not accurately depict Petitioner's status or Idaho taxable income. Therefore, the Tax Commission modified the return prepared by the Bureau to reflect a part-year resident status, reduced Petitioner's Idaho source income to the income he received while in Idaho, and allowed a dependent exemption deduction for Petitioner's son.

Petitioner's corrected filing for taxable year 2009 resulted in a refund to Petitioner. However, Idaho Code section 63-3072 prohibits crediting or issuing refunds if a claim for refund is not made within three years of the due date of the return. Petitioner's 2009 income tax return was due on April 15, 2010. Even though Petitioner may have mailed his 2009 income tax return before April 15, 2010, absence evidence of mailing, the Tax Commission must deny the refund for taxable year 2009.

THEREFORE, the Notice of Deficiency Determination dated June 30, 2015, and directed to **[Redacted]** is AFFIRMED AS MODIFIED by this decision.

Since the Tax Commission is denying a refund to Petitioner, a demand or order for payment is unnecessary.

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

DATED this _____ day of _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
