

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-821-198-336
<span style="background-color: black; color: black;">[REDACTED]</span> ,	)	
	)	
Petitioner.	)	DECISION
<hr style="width: 45%; margin-left: 0;"/>	)	

[REDACTED] (Petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated July 11, 2019 asserting liability for Idaho income tax, penalty and interest in the total amounts of \$3,124 and \$1,494 for 2012 and 2013, respectively.

Petitioner filed Idaho income tax returns for the years here at issue in January of 2019, reporting a distribution from an individual retirement system for 2012 and rental income for 2013. For both years, Petitioner filed returns as a nonresident of Idaho. In both years, she omitted compensation paid by an Idaho employer. She also omitted a distribution reported to her on a Form 1099-R for 2012. Petitioner did not request a hearing and did not submit additional documentation or authority during this appeal. Therefore, the Commission now renders its determination based upon the information in the file.

Petitioner raises several arguments, most of them are standard tax protester rhetoric. Among the issues she raises are the following:

1. That there is no basis for finding that she was an Idaho resident in 2012.
2. There is no basis for finding that she was a resident for any part of 2013.
3. Her compensation isn't taxable because she has become a nonresident alien and her income is excluded from taxation by Internal Revenue Code (IRC) section 872.
4. That the income reported to her on Form 1099-R isn't from a "qualified retirement account" as that term is defined in IRC section 4974.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-75 n.2, (Ct. App. 1986); *Albertson's Inc., v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the taxpayer to show that the tax deficiency is erroneous. *Parsons*, Id.

### **ISSUES 1 & 2: 2012 Residency**

Petitioner filed Idaho resident income tax returns for several years prior to 2012 (up to and including 2011). She voted in Idaho elections in 2010, 2011, and 2012. The last such vote was November 6, 2012 on a form with a warning: “any elector who supplies any information knowing it to be false is guilty of perjury which is punishable by imprisonment and a fine of up to \$50,000.” Petitioner, on October 23, 2012, certified that she was an Idaho resident and a citizen of the United States of America. From this foundation, Petitioner contends that the auditor’s finding that she was a resident of Idaho for 2012 or any part of 2013, and that she was not a nonresident alien of the United States was “arbitrary and capricious.”

Idaho Code section 63-3013 states, in part:

Resident. (1) The term “resident,” for income tax purposes, means any 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.

A person may be a “resident” for Idaho income tax purposes either by being domiciled in Idaho or having spent the requisite number of days in Idaho.

Every person has a domicile at all times, but no person has more than one domicile at a time. Restatement 2d, Conflict of Laws, § 11(2). Even though a person has no home, he must nevertheless have a domicile. Restatement 2d, Conflict of Laws, § 11(m).

Domicile forms a constitutional basis for the imposition of state income taxes on an individual. New York, ex rel. *Cohn v. Graves*, 300 U.S. 308 (1937); *Lawrence v. State Tax Commission*, 286 U.S. 276 (1932).

Since Petitioner had filed Idaho income tax returns for a number of years (up to and including 2011) as an Idaho resident, it appears to the Commission that Petitioner was domiciled in Idaho prior to 2012. The U. S. Tax Court addressed the burden of proof regarding a change in domicile:

A domicile once acquired is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensable: First, resident in the new locality; and, second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike necessary. (*Mitchell v. United States*, 88 U.S. 350, 21 Wall. 350.)

*Whitmore v. Commissioner*, 25 T.C. 293, 297 (1955).

Petitioner has the burden of establishing that her domicile changed from Idaho to Oregon before the date of such change as determined by the auditor. She has produced no documentation to demonstrate such a change. Therefore, she has failed to carry her burden of proof. The Commission finds that the residency of Petitioner was properly determined by the auditor.

### **ISSUE 3: Is Petitioner's compensation taxable?**

Petitioner's next argument is that her compensation is not taxable. In a case in which the tax protester was found guilty of 5 counts of willful failure to file federal tax returns pursuant to IRC section 7203, the Ninth Circuit Court of Appeals addressed the taxability of compensation:

Compensation for labor or services, paid in the form of wages or salary, has been universally, held by the courts of this republic to be income, subject to the income tax laws currently applicable. We recognize that the tax laws bear heavily on all persons engaged in gainful activity, and recognize the right of a taxpayer to minimize his taxes by all lawful means. But Romero here is not attempting to minimize his taxes; instead he is attempting willfully and intentionally to shift his burden to his fellow workers by the use of semantics. He seems to have been

inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance, all to the detriment of the common weal and of themselves.

*United States v. Romero*, 640 F.2d 1014, 1016 (1981).

The Seventh Circuit Court of Appeals, in a case in which the defendant was convicted of willful failure to file income tax returns and filing false withholding statements, the taxability of wages or compensation was addressed as follows:

Although not raised in his brief on appeal, the defendant's entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us already are aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: **WAGES ARE INCOME**. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages—or salaries—are not taxable.

*United States v. Koliboski*, 732 F.2d 1328, 1329 n.1 (7<sup>th</sup> Cir. 1984). (emphasis in original).

#### **ISSUE 4: Is the amount reported to Petitioner on a 1099-R taxable?**

Petitioner received a 1099-R on which the distribution amount and the taxable amount were shown. Petitioner did not report the income reflected on that particular 1099-R, even though she did report the income from two other Forms 1099-R. Petitioner contends that the amount on that 1099-R is not taxable:

The distribution reported by US Bank National on 1099-R . . . is not taxable because it was not from a “qualified retirement plan” as that term is defined in IRC Section 4974 and not from an “individual retirement account” as that term is defined at IRC Section 408. Thus the distribution was erroneously reported as taxable and was lawfully excluded from our “gross income” on our 2012 return.

The Second Circuit Court of Appeals, addressed a matter in which there was a question as to whether the amount should be included in the computation of the taxpayer’s taxable income addressed the matter, in part, as follows:

Though Congress did not specifically include the lump sum allowance as "income" in NERSA, Congress need not specifically include any payment as income for it to



be subject to taxation. Rather, the Internal Revenue Code defines gross income broadly as "all income from whatever source derived." 26 U.S.C. § 61(a) (1982) (emphasis added). The Supreme Court has consistently given this definition of gross income a liberal construction "in recognition of the intention of Congress to tax all gains except those specifically exempted." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430, 75 S.Ct. 473, 476, 99 L.Ed. 483 (1955) (emphasis added); see also *United States v. Stewart*, 311 U.S. 60, 71, 61 S.Ct. 102, 109, 85 L.Ed. 40 (1940) ("those who seek an exemption from a tax must rest it on more than a doubt or ambiguity"); *United States Trust Co. v. Helvering*, 307 U.S. 57, 60, 59 S.Ct. 692, 693, 83 L.Ed. 1104 (1939) ("Exemptions from taxation do not rest upon implication."); *Bank of Commerce v. Tennessee ex rel. Memphis*, 163 U.S. 416, 423, 16 S.Ct. 1113, 1116, 41 L.Ed. 211 (1896) ("[T]he claim for exemption must rest upon language in regard to which there can be no doubt as to its meaning, and ... the exemption must be granted in terms too plain to be mistaken...."). The mere fact that Congress specifically included certain payments as "income" does not mean that all other payments not specifically included are therefore not "income". Rather, Herbert's separation allowance is taxable as gross income unless Congress has enacted a specific exemption evidencing "clear congressional intent" to the contrary. *Glenshaw*, 348 U.S. at 431, 75 S.Ct. at 477.

*Herbert v. United States*, 850 F.2d 32, 34 (2<sup>nd</sup> Cir. 1988).

Petitioner, if correct, could have procured and submitted a corrected 1099-R, but she didn't. Petitioner has failed to provide any specific provision exempting her income from the 1099-R. The "taxable amount" on said 1099-R was excluded by Petitioner and added by the auditor. Petitioner, again, has failed to carry her burden of proof with regard to the distribution shown on the 1099-R. Accordingly, the Commission finds that the auditor properly added this amount in determining Petitioner's Idaho taxable income and her liability.

THEREFORE, the Notice of Deficiency Determination dated July 11, 2019, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest (computed to August 31, 2020):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$ 2,086	\$ 522	\$ 601	\$ 3,209
2013	1,019	255	260	<u>1,534</u>
				<u>\$ 4,743</u>

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

IDAHO STATE TAX COMMISSION



**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2020,  
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:

Receipt No.



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