

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-090-162-176
)	
Petitioner.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>)	

(Petitioner) protested the Notice of Deficiency Determination (Notice) dated June 1, 2023. The Tax Commission reviewed the matter and hereby issues its final decision upholding the Notice. This means Petitioner needs to pay \$2,188 of tax, penalty, and interest for tax year 2022. The Tax Commission DEMANDS immediate payment of this amount.

Background

Petitioner filed an Idaho individual income tax return for tax year 2022 using Form 40. He reported \$0 taxable income, claimed the \$100 grocery credit and \$2,076 of Idaho income tax withholding, and requested a refund of \$2,166.

Petitioner reported an adjusted gross income of -\$33,425 on his federal return, which consisted of \$15,569 of wages and a \$48,994 loss on Schedule C. This loss was derived from \$36,347 in reported gross receipts against \$85,341 in total expenses; Petitioner indicated on line 1 of Schedule C that he was a statutory employee.

Petitioner engaged in a series of correspondence between himself and two units within the Tax Commission (first Revenue Operations [RO] and then Tax Discovery Bureau [Bureau]) spanning from March 28 to May 18, 2023. RO and the Bureau requested copies of his W-2s and documentation supporting expenses claimed on Schedule C. Petitioner provided W-2s from the County of San Diego and Contra Costa County and multiple written statements. In his letters, Petitioner stated the following: he lived and worked in Idaho for two government entities located

in California; he was told he needed to file an income tax return in the state where he worked, not necessarily in the state where his employers' addresses were located; he maintained his residence in Idaho for the entire year; he incurred extensive expenses which were not reimbursed by his employers; he had a business loss from self-employment activity that began before 2022; and he was told by both the Internal Revenue Service and the State of Idaho that he did not need to retain documentation to support his expenses if he kept a total. Throughout the series, Petitioner maintained that he was due the full refund he claimed on his state return.

On June 1, 2023, the Bureau issued the Notice for tax year 2022 to deny all the expenses claimed on Petitioner's federal Schedule C and to deny the state withholding claimed on his Idaho Form 40. Petitioner responded, stating that he was instructed to file taxes in the state where he lived and worked (Idaho) and that taxes were taken out in California by mistake. He requested that the State of Idaho cease all efforts regarding tax collection and stated that he will file taxes in California instead.

On June 16, 2023, the Bureau sent a letter acknowledging Petitioner's protest, providing additional information to him regarding taxation in Idaho and California, and informing him that his protest was being forwarded to the Tax Commission's Appeals unit (Appeals).

On August 8, 2023, Appeals sent Petitioner a letter outlining two options for redetermining a protested Notice. Petitioner did not respond. Therefore, the Tax Commission decided this matter based on the information currently available.

Law & Analysis

According to Idaho Code section 63-3013, if a person is domiciled in Idaho for the entire tax year – or maintains a place of abode in the state for the entire tax year and spends more than 270 days in the state – that person is a “resident” for income tax purposes. Domicile refers to the

place where an individual has their true, fixed, permanent home and principal establishment; it is the place to which one intends to return when away and the place one considers “home” for the indefinite future.¹ Petitioner stated in his response dated April 11, 2023, that he “was allowed to perform his [employment] duties from home in Idaho” and that he “maintained [his] residence for 2022 entirely in Idaho.” Similarly, Petitioner stated in his April 29, 2023, response that “[a]s a ‘perk’ [he] was able to work from home remotely.” These statements imply that Petitioner was domiciled in Idaho for all of tax year 2022. In addition, Petitioner filed his Idaho return using Form 40, which is used by residents to calculate their taxable income and tax; nonresidents and part-year residents use Form 43, as their Idaho taxable income is not calculated the same way as a resident’s. The Tax Commission finds that Petitioner was an Idaho resident for income tax purposes. As such, he is subject to Idaho income tax on all his income for tax year 2022, no matter the source.

In correcting Petitioner’s Idaho taxable income, the Bureau determined that the loss he reported on Schedule C was incorrect. As stated previously, Petitioner reported a \$48,994 loss on Schedule C. Because Petitioner reported both income and expenses on the same Schedule C, the Tax Commission inferred that the expenses were incurred in performance of the duties for which Petitioner was paid \$36,347². Based on both the W-2 information Petitioner reported on his federal return and the printed W-2 he provided, the gross receipts were wages he earned working for the County of San Diego. Petitioner indicated on line 1 of Schedule C that he was a statutory employee (an independent contractor treated as an employee for Medicare and Social Security tax withholding purposes). Internal Revenue Code section 3121(d) defines the term “employee” statutorily as any individual (who is not an officer of a corporation or a person with the status of

¹ See Idaho Income Tax Administrative Rule 030.02.

² The Internal Revenue Service provides guidance stating that if a person owns more than one business, a separate Schedule C must be completed for each one.

“employee” under common law rules) who performs services for money as a driver delivering certain goods, a full-time life insurance salesperson, a home worker performing work on materials or goods supplied to them and returned to the supplier or a designated agent, or a traveling or city salesperson performing certain activities. As an independent contractor, a statutory employee may claim ordinary and necessary self-employment business expenses under Internal Revenue Code section 162. Petitioner has not provided any information about what services he performed for his employers, so the Tax Commission cannot determine that he falls into one of the four categories outlined above. Neither W-2 he provided indicates that he was a statutory employee. Common law (non-statutory) employees cannot deduct unreimbursed employee expenses under the Tax Cuts and Jobs Act of 2017 as it eliminated miscellaneous itemized deductions from Schedule A for tax years 2018 through 2025. In summary, the Tax Commission has not received any evidence showing that Petitioner was eligible to claim business expenses as either a statutory or common law employee.

In both his April 11 and April 29, 2023, correspondence, Petitioner mentioned losses from a business he established prior to 2022. In his April 11 letter, Petitioner mentioned that he started the business in 2019 but did not provide any further details. In his April 29 letter, he stated that he started the business in late 2021 and that the business has not been launched yet. He went on to list various expenses, some of which could potentially qualify as ordinary and necessary expenses under Internal Revenue Code section 162, but many of which (specifically medical expenses) are personal expenses which would be deductible as itemized deductions on Schedule A (Petitioner claimed the standard deduction amount in lieu of itemizing his deductions and is therefore not eligible to claim such expenses). The Tax Commission recognizes that Petitioner may have operated a sole proprietorship that incurred qualifying expenses. However, deductions for such

expenses are a matter of legislative grace, and the taxpayer bears the burden of showing that each deduction is allowable by statute. *New Colonial Ice Co. v. Helvering*, 292 US. 435, 54 S.Ct. 788 (1934); *Higgins v. C.I.R.*, T.C. Memo. 1984-330, (1984). The burden rests upon the taxpayer to disclose its receipts and claim its proper deductions. *United States v. Ballard*, 535 F.2d 400 (1976). If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed, and the taxpayer must bear its misfortune. *Burnet v. Houston*, 283 US. 223, 51 S.Ct. 413 (1931). The Tax Commission has not received any information about the nature of Petitioner's business activities or documentation to support the expenses he outlined in his responses. In fact, Petitioner explicitly stated that he did not retain original documents.

Based on the analysis in the preceding two paragraphs, the Tax Commission agrees with the Bureau's conclusion that the deductions for expenses reported on Schedule C should not be allowed and that the "gross receipts" from Schedule C should be categorized as wages on Form 1040 instead.

On his Idaho return, Petitioner claimed \$2,076 of Idaho income tax withholding as payment against tax. However, both his W-2s clearly show that his employers withheld income tax for the state of California. The Tax Commission finds that Petitioner's Idaho income tax withholding as reported should be reduced to \$0.

In Idaho, it is well established that a Tax Commission Notice is presumed to be correct, and the taxpayer bears the burden of showing the deficiency is erroneous. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986) (citing *Albertson's Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814 (1984)). The Tax Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Petitioner has failed to do so.

The Bureau added interest and penalty to Petitioner’s tax deficiency. The Tax Commission reviewed those additions and finds them to be appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

Conclusion

The Bureau determined that Petitioner was ineligible to claim businesses expenses on Schedule C, and that he incorrectly claimed California income tax withholding on his Idaho return. Petitioner has not shown that the Notice issued by the Bureau was incorrect.

THEREFORE, the Notice dated June 1, 2023, and directed to _____ is hereby AFFIRMED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2022	4,181	101	72	4,354
			Refund Held	(2,166)
			TOTAL DUE	<u>2,188</u>

Interest is calculated through January 2, 2024.

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

DATED this _____ day of _____ 2023.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2023,
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.
