

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-306-611-200
	)	
Petitioner.	)	DECISION
<hr style="width: 45%; margin-left: 0;"/>	)	

(Petitioner) protested the Notice of Deficiency Determination dated May 2, 2022. Petitioner disagreed that Idaho can tax income that he earned when he lived and worked in Washington. The Tax Commission reviewed the matter and found that Petitioner received the income after he became a resident of Idaho, so for that reason the Tax Commission upholds the audit adjustment.

**BACKGROUND**

The Tax Discovery Bureau (Bureau) received information from the Internal Revenue Service (IRS) that a change was made to Petitioner’s 2018 federal income tax return for unreported wage and interest income. The Bureau reviewed the change and determined Petitioner’s 2018 Idaho income tax return should be changed as well. The Bureau adjusted Petitioner’s Idaho income tax return and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau’s determination stating that he never worked in the state of Washington nor was he employed in the state of Idaho which would incur a state income tax. Petitioner stated the income in question was a payment of medical insurance while he lived in Washington. Petitioner stated the insurance company said an error was made in the payment due him while he was living in Washington, not Idaho. Petitioner stated while waiting for the processing of the payment, he sold his Washington house and lived with friends and in hotels. He had no forwarding address. Petitioner stated when he purchased his house in Idaho, the insurance

company was able to track him down and sent the money to his Idaho address. Petitioner stated the money had nothing to do with employment in the state of Idaho. Petitioner stated he does not owe any tax to Idaho. Petitioner stated further that his accountant told him that the payment was a disability check and that it was not taxable.

The Bureau acknowledged Petitioner's protest and asked that he provide documentation of who paid the premiums for the insurance policy. Petitioner did not respond. The Bureau sent Petitioner another letter stating that from the information received from the IRS, the income he received was reported as wages received in 2018 and that his 2018 Idaho income tax return reported him as a full year Idaho resident. The Bureau asked Petitioner if he wanted to withdraw or continue his protest.

Petitioner replied that he wanted to continue his protest. Petitioner also provided more information regarding the payment. Petitioner stated the income was sick pay he received from his employer's insurance company. Petitioner stated that due to his illness and after surgery he was terminated by his employer. Petitioner stated as a result, he retired in 2017. Petitioner stated he purchased a house in Post Falls, Idaho in 2017 but did not move into the house until the end of January 2018. Petitioner stated the period between selling his Washington residence and moving into his Idaho residence he was in limbo with no forwarding address. Petitioner stated because he had no address, the insurance company could not send him his insurance payment. Petitioner stated it was not until he obtained his Idaho address that the insurance company was able to track him down and send him the money. Petitioner stated that had he known Idaho would tax his final insurance payment, he would have stayed in Washington to receive the payment and then moved to Idaho.

Since Petitioner wanted to continue his appeal, the Bureau referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals reviewed the file and sent Petitioner a letter asking him to show when he became an Idaho resident and when he received the payment from the insurance company. Appeals also told Petitioner of the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner responded with a letter. Petitioner stated the insurance payout occurred in the state of Washington where he resided at the time of the medical issue that created the payout. Petitioner stated it was because of accounting errors that he did not receive his back pay until after moving to Idaho. Petitioner stated he took possession of his Idaho house in January 2018 but was not permanently there because the house was in disarray and needed repairs. Petitioner stated again that had he collected his back pay while still in Washington, he would not be going through this.

#### **LAW AND ANALYSIS**

Idaho Code section 63-3002 states the intent of the Idaho Legislature regarding the Idaho Income Tax Act. It states that the Idaho Act is to be identical to the Internal Revenue Code as it relates to the measurement of taxable income, in so much that taxable income reported to Idaho is the same as that reported to the IRS, subject to the modifications contained in the Idaho law. Therefore, any changes to Petitioner's federal taxable income should also be made to Petitioner's Idaho taxable income.

The Bureau adjusted Petitioner's 2018 Idaho individual income tax return to agree with the adjustment made by the IRS. The IRS adjustment was for unreported wages and interest.

Petitioner stated the adjustment was sick pay he received from employment when he lived and worked in Washington. Petitioner stated the insurance company that paid the sick pay made accounting errors that resulted in the delay of the payment. Petitioner also stated that during this

time he had no address because he had sold his Washington house and was purchasing a house in Idaho. Petitioner stated the insurance company made payment but only after it tracked him down at his Idaho address. Petitioner stated he received payment of his sick pay while in Idaho.

The general rule in state taxation is that states tax their residents based on their income from wherever derived. Idaho's law to this effect is Idaho Code section 63-3002. Petitioner filed a 2017 part-year resident Idaho income tax return stating that he was a resident of Idaho for two months. Petitioner filed a full year resident Idaho income tax return for 2018. Information provided to the IRS reported Petitioner received wages in 2018 from \_\_\_\_\_ and

(\_\_\_\_\_ Solely based on how Petitioner filed his Idaho income tax returns, Petitioner should have reported these 2018 wages on his 2018 Idaho income tax return.

Petitioner argued that the insurance company payment was for time when he lived and worked in Washington. Treasury Regulation section 1.451-2(a) defines and discusses constructive receipt of income. It states:

Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions...

An argument could be made that Petitioner constructively received the insurance payment in 2017. However, based on the information Petitioner provided, there were problems with crediting the payment which substantially limited Petitioner's control of the funds. Therefore, Petitioner would not be deemed to have had constructive receipt of the income in 2017.

Petitioner argued that Idaho could not tax the income because it was earned in Washington; Idaho had nothing to do with the income. However, the Idaho Supreme Court in *State Tax Commission v. Stang*, 135 Idaho 800, 25 P.3d 113, (2001), stated that a distribution from an IRA

where all the contributions to the IRA were made in another state and taxed by that state was taxable by Idaho because the distributions were received while the taxpayers resided in Idaho. The Court stated the Idaho law did not have a provision to exempt the income, therefore, it is included in Idaho income. Likewise, in this case, Petitioner received the income while residing in Idaho and there is no provision to exclude it from Idaho income.

Since Petitioner admittedly received the funds in 2018 while he was in Idaho, the Tax Commission finds Petitioner must include the insurance payment and the wages from in Idaho taxable income. Therefore, the Tax Commission upholds the adjustment to Petitioner's 2018 Idaho income tax return.

### **CONCLUSION**

The IRS adjusted Petitioner's 2018 federal income tax return for income that was not reported. The Bureau received the federal audit information and determined the same adjustment needed to be made to Petitioner's Idaho income tax return. Petitioner argued the income had nothing to do with Idaho and his circumstances resulted in him receiving the income after his move to Idaho. However unfortunate Petitioner's circumstances were, the fact is Petitioner received the unreported income while he was in Idaho. The law is clear, residents of this state are taxed based on a measurement of income from all sources wherever derived. Since Petitioner received the income while in Idaho, he was required to report that income to Idaho. Therefore, the Tax Commission upholds the Notice of Deficiency Determination.

The Bureau added the penalty of Idaho Code section 63-3069 to Petitioner's tax deficiency. The Tax Commission reviewed the addition of the penalty and found it appropriate.

The Bureau also added interest to Petitioner’s tax. The Tax Commission reviewed that addition and found it appropriate. See Idaho Code section 63-3045. Interest is calculated through December 15, 2023.

THEREFORE, the Tax Commission AFFIRMS the Notice of Deficiency Determination dated May 2, 2022, directed to

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>
2018	\$2,156	\$108	\$374	\$2,638

An explanation of Petitioners’ 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.

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