

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 2-104-387-584
)	
)	
Petitioners.)	DECISION
_____)	

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We uphold the Notice of Deficiency Determination (Notice) dated April 13, 2018. This means **you need to pay \$5,960** of tax, penalty and interest for taxable years 2014 through 2016. The Commission now DEMANDS immediate payment of this amount.

BACKGROUND

(Petitioners) were Idaho residents for the years under review. For taxable years 2014 through 2016, Petitioners timely filed their Idaho resident income tax returns. Each year’s return showed deductions on Schedule A for Job Expenses and Certain Miscellaneous Expenses; \$31,527, \$29,892 and \$21,285, respectively, for taxable years 2014 through 2016.

On March 21, 2018, the Income Tax Audit Bureau (Audit) notified Petitioners their 2014 through 2016 returns were being examined, specifically the Job Expenses deductions on Schedule A, as shown below, including the deduction for depreciation.

Tax year	2014	2015	2016
Laundry	\$181	\$181	
Mileage	9,425	10,378	
Per Diem	11,440	12,480	14,364
RV Expense	2,681	1,225	
Safety gear	1,504	203	1,317
Telephone	1,680	2,928	2,208
Depreciation	7,827	4,696	2,818
Motel		363	325
Furnishings			2,400
Tools			309
Utilities			249

As part of the review, Audit requested Petitioners provide substantiation for these deductions by April 4, 2018. They did not do so. Therefore, Audit issued a Notice disallowing all Job and Certain Miscellaneous expenses claimed on Petitioners' Schedule A.

Petitioners, through their appointed representative, protested the Notice, arguing that Mr. work in the oil fields of North Dakota was temporary, therefore, all unreimbursed employee business expenses are allowable deductions. Included with Petitioners' appeal were a variety of receipts, some for each tax year. Audit reviewed the information provided with the appeal, decided no adjustment to the Notice was called for and referred the matter to the Appeals unit for administrative review.

An informal hearing was held on March 5, 2019. Petitioners provided no other documentation at the hearing or at any time during the administrative review process.

LAW AND ANALYSIS

Idaho Code section 63-3042 authorizes the Idaho State Tax Commission to examine any books, papers, records, or other data necessary to ascertain the correctness of a return. Tax Commission Administrative and Enforcement rule 201.04(a) authorizes the Idaho State Tax Commission to disallow claimed deductions if a taxpayer does not produce records supporting information shown on a tax return.

Taxpayers have no inherent right to deductions; they are a matter of legislative grace. *Interstate Transit Lines v. Commissioner*, 319 U.S. 590, 593, 63 S. Ct. 1279, 1281, 87 L. Ed. 1607 (1943); *New Colonial Ice, Inc. Co. v. Helvering*, 292 U.S. 435, 440, 54 S. Ct. 788, 790, 78 L. Ed. 1348 (1934). Therefore, when seeking a deduction Petitioners must be able to point to some particular statute to justify their deduction and establish that they come within its terms. *Deputy et al. v. Du Pont*, 308 U.S. 488, 493, 60 S. Ct. 363, 366, 84 L. Ed. 416 (1940).

Section 62(a)(2)(A) of the Internal Revenue Code states that an individual performing services as an employee may deduct certain business expenses incurred in connection with the performance of services as an employee as miscellaneous itemized on Schedule A, to the extent the expenses exceed 2% of the taxpayer's adjusted gross income.

Generally, a taxpayer may not deduct personal, living, or family expenses, such as the costs of transportation, meals, and lodging while traveling away from home. Sec. 262; sec. 1.2621-(b)(5), Income Tax Regs.

Section 162(a)(2) of the Internal Revenue Code allows a deduction for ordinary and necessary travel expenses incurred by a taxpayer while "away from home" in the conduct of a trade or business. The reference to "home" in section 162(a)(2) means the taxpayer's "tax home". As a general rule, a taxpayer's tax home is determined by the location of the taxpayer's principal place of employment, regardless of where the taxpayer's personal residence is located. *Mitchell v. Commissioner*, 74 T.C. 578, 581 (1980).

The language of section 162(a) provides that a "taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year" Employment is defined as "temporary" only if the taxpayer can foresee its termination within a reasonably short period of time or it is for a fixed duration. *Boone v. United States*, 482 F.2d 417, 419 (5th Cir. 1973).

As mentioned previously, Petitioners' appointed representative argues Mr. employment in North Dakota was temporary due to the uncertainty of the oil industry and the lack of assurance from the employer the work would be permanent. The representative also argues, "a calendar time frame does not denote permanence". The Commission disagrees as does the Internal Revenue Service's definition of a temporary work assignment. Mr. worked

for the same employer in North Dakota for all three of the years under review. North Dakota was his tax home for the relevant period and he was not “away from home” within the meaning of IRC section 162(a)(2). Petitioners are not entitled to a deduction for vehicle expenses, lodging, meals, and incidentals incurred because of Mr. employment in North Dakota. These costs were personal, family, or living expenses, not business expenses.

Additionally, even if it was decided Mr. employment was temporary, the expenses claimed were not adequately substantiated. Petitioners provided receipts during the audit that verified the payment of some of the expenses. However, none of the receipts included the business purpose and some were clearly and obviously not related to Mr. employment in the oil fields. For instance, items such as toddler snow boots, miter saw, bikini, and ammunition appeared on the receipts provided.

CONCLUSION

On appeal, a deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect.

Petitioners have not set forth any substantive argument or documentation to show that the Notice prepared by Audit is incorrect. Therefore, the Commission finds that the amounts shown are correct.

The Notice dated April 13, 2018, and directed to is hereby
AFFIRMED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$1,939	\$97	\$363	\$2,399
2015	1,831	92	269	2,192
2016	1,181	59	129	1,369
			TOTAL DUE	<u>\$5,960</u>

Interest is calculated through December 19, 2019.

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

DATED this _____ day of _____ 2019.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019,
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.

copy to: