BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-421-146-112
[redacted]	)	
	)	
Petitioner.	)	DECISION
	)	

On April 10, 2019, the Central Processing Bureau (Bureau) at the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (Notice) to [redacted] (Petitioner). The Bureau determined Petitioner had $50,000 in unreported income. The Bureau proposed income tax of $2,443, reducing Petitioner refund from $3,453 to $1,010.

On April 15, 2019, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Bureau acknowledged the protest and referred the matter for administrative review. On June 19, 2019, the Tax Commission sent Petitioner a letter informing her that she could request an informal hearing or submit additional documentation. On July 1, 2019, Petitioner called the Tax Commission; Petitioner did not request an informal hearing but wanted an explanation of the Notice. An explanation was provided along with information on the appeal process. On July 10, 2019, Petitioner requested a decision based on the information already provided.

Therefore, this final decision is based on the information available in the protest file. After reviewing all the information, the Tax Commission hereby issues its decision to uphold the Notice.

BACKGROUND

For tax year 2018, Petitioner was a nonresident of Idaho and was a full-year resident of Utah. While traveling in Idaho, Petitioner purchased an Idaho Lottery instant ticket and won

$50,000. Petitioner received a Form W-2G, Certain Gambling Winnings, showing $50,000 in Idaho winnings and $3,463 in Idaho state income tax withheld.

Petitioner filed an Idaho nonresident individual income tax return showing no income and no tax liability. However, Petitioner requested a refund of $3,463 of taxes withheld by the Idaho Lottery. The Bureau determined the $50,000 in lottery winnings was subject to Idaho taxation. Petitioner argued the income is not taxable by Idaho because she is a nonresident of Idaho and the income must be reported to her state of residence.

Petitioner also filed an amended Idaho return showing $31,855 in gambling losses, which were not claimed on the original return. Petitioner is not a professional gambler, did not keep a record of her winnings and losses, and threw away most of her losing lottery tickets. Petitioner indicated she estimated the amount of the gambling losses. Petitioner argued she is entitled to a deduction for gambling losses.

FINDINGS

Nonresident Individuals – Income Subject to Idaho Taxation

All income earned or received from sources within Idaho is subject to Idaho taxation[1]. Income from Idaho sources is the gross income, or portion thereof, that is derived from a business, trade, profession, or occupation carried on within Idaho or from any property, trust, estate, or any other source with a connection to Idaho[2]. Income from pari-mutuel wagering, charitable gaming, or any other form of gambling taking place within this state is Idaho source income[3].

[1] Idaho Code §§ 63-3026A(1) and (2), and Income Tax Administrative Rules 250 - provides the general rules of income subject to Idaho taxation of nonresidents and part-year residents.

[2] Idaho Code § 63-3026A(3) & Income Tax Administrative Rules 260 - defines income from Idaho sources.

[3] Idaho Code § 63-3026(A)(3)(a)(vi) – provides that conduct of pari-mutuel wagering, charitable gaming, or any other form of gambling taking place within this state is Idaho source income unless expressly limited in Idaho Code § 67-7439.

[redacted]

The Commission concludes that the $50,000 in Idaho Lottery winnings is subject to Idaho taxation. The lottery ticket was purchased from a source with a connection to Idaho, the *Idaho Lottery* [emphasis added], and the gambling took place within Idaho.

Gambling Losses

Gambling losses in a tax year are deductible, but only to the extent of that year's gambling gains[4]. To claim a loss, a taxpayer must prove both the amount of losses and winnings in the tax year[5]. Otherwise, where the taxpayer has or may have unreported winnings, there can be no way of knowing whether the sum of the losses claimed on the return is greater or less than the sum of the taxpayer's reported and unreported winnings. It is well established in Idaho law and federal income tax law that a taxpayer claiming a deduction, exemption or credit bears the burden of establishing his or her entitlement to the same, both as to law and fact[6].

If a taxpayer is unable to substantiate expenses or deductions through adequate records or other proof, the Commission may estimate the deductible amount, an approach which is called "the Cohan rule." However, for the Cohan rule to apply, there must be enough evidence to establish the estimate was in fact spent or incurred for the stated purpose. The courts have refused

---

[4] Internal Revenue Code § 165(d) – provides for a deduction of gambling losses.

[5] The requirement of substantiation begins with Internal Revenue Code § 6001 which states that, as a general rule, everyone who is required to pay or collect any Internal Revenue tax must keep permanent books of account or records that are sufficient to establish the correct amount of income, credits, deductions and other matters required to be reported on returns.

[6] Deductions are a matter of legislative grace, and taxpayers bear the burden of proving that they are entitled to the deductions claimed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S.Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934). The taxpayer must be able to point to some particular statute to justify his deduction and establish that he comes within its terms. Deputy v. DuPont, 308 U.S. 488, 493 (1940);

to apply the Cohan rule where a taxpayer kept no records and the claimed deduction was admittedly a guess[7].

The Commission concludes no gambling losses can be allowed. Petitioner kept no record of her winnings and losses, and her claimed deduction was admittedly a guess. Petitioner stated she plays lottery and sustained gambling losses during 2018.

Double Taxation

Generally, two states have jurisdiction to tax cross-border income. The state where the income was earned (the "source" state) has jurisdiction to tax on a "source" basis, and the state where the taxpayer resides (the "residence" state) has jurisdiction to tax on a "residence" basis. In general, when a taxpayer's income is being subject to tax by more than one state, a taxpayer's state of residence will allow a credit for taxes paid to another state.

In this case, the lottery winnings were earned in Idaho (the "source" state) and Petitioner resided in Utah (the "residence" state). Both Idaho and Utah had the right to tax the Idaho Lottery winnings. Consequently, Petitioner is being taxed by more than one state on the same income. To prevent this double taxation, Petitioner may be entitled to a credit for taxes paid to Idaho on her Utah individual income tax return[8]. A review of the Utah resident individual income tax return provided by the Petitioner, shows a credit for taxes paid to Idaho was not claimed on the Utah return. The Commission suggests Petitioner consider filing an amended Utah tax return.

---

[7] Giovanni P. Altobelli, TC Memo 1975-53; John D. Smith, et ux. v. Commissioner, TC Memo 1998-212

[8] Utah Code § 59-10-1003 – provides that if you are Utah residents with income being taxed by Utah and another state, you may be entitled to a credit for taxes paid to another state.

CONCLUSION

The Notice dated April 10, 2019, and direct to [redacted] is hereby APPROVED and MADE FINAL.

YEAR	REFUND CLAIMED	REFUND ALLOWED	ADJUSTMENT
2018	$3,453	$1,010	$2,443

No DEMAND for payment is necessary since this was a Notice of Refund Determination.

An explanation of Petitioner's 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:

[redacted]

Receipt No.

____

[redacted]