BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 19383
[REDACTED]	)	
Petitioner.	)	DECISION
	)	
	)	

The Idaho State Tax Commission (Tax Commission) received a taxable year Idaho 2004 Form 66, Idaho Fiduciary Income Tax Return, along with a taxable year federal 2004 Form 1041, Income Tax Return for Estates and Trusts, from [Redacted] (taxpayer), dated April 13, 2005. Attached to Idaho Form 66 was the taxpayer's W-2, which shows that the taxpayer did receive income. Because the returns contained errors, the returns were referred to the Tax Discovery Bureau.

On approximately August 1, 2005, the staff of the Tax Discovery Bureau (TDB) of the Tax Commission sent a Notice of Deficiency Determination (NOD) to the taxpayer, proposing income tax, penalty, and interest for the 2004 taxable year. TDB also sent questionnaires to the taxpayer at this time to better determine the tax liability.

The Tax Commission received a "Protest" from the taxpayer on August 9, 2005. This "Protest" contained tax protestor language and made references to the United States Fifth Amendment and the taxpayer therein refused to answer the questionnaires.

On August 17, 2005, the Tax Commission mailed another letter to the taxpayer rescinding the July 26, 2005, NOD due to administrative error. Based upon W-2 and Department of Labor figures, the Tax Commission created provisional returns for the taxpayer and issued and sent a new NOD dated August 30, 2005, to the taxpayer proposing income tax, penalty, and interest for the taxable years 2002, 2003, and 2004, totaling $591.00.

On October 26, 2005, the taxpayer filed a document treated as a timely appeal and petition for redetermination. On October 31, 2005, the file was sent to the legal department for review and the taxpayer was notified of that action by letter.

The legal department reviewed the matter and the taxpayer was sent a letter dated May 23, 2006, giving her two options for having the NOD redetermined. The options were to have a hearing or for the taxpayer to produce additional information for consideration by the Tax Commission. The taxpayer did not respond specifically to the letter. Another letter was sent dated July 6, 2006, giving the taxpayer additional time to choose one of the two options. The taxpayer responded by letter dated July 18, 2006, and chose not to have a hearing but to submit additional information.

Importantly, while the above correspondence was occurring, the Tax Commission received the taxpayer's 2002 Idaho Individual Income Tax Return on April 13, 2006, and the taxpayer's 2003 and 2004 Idaho Individual Income Tax Returns on June 13, 2006. Unfortunately, the tax returns and accompanying Form 4852 Substitute W-2 forms all contained zeros in the income and wages lines, yet indicated refunds were due from wages and income withheld. The zero entries are inconsistent with the W-2 the taxpayer submitted with the taxable year 2004 Idaho Fiduciary Income Tax Return previously filed with the Tax Commission on April 13, 2005. The zero entries are also inconsistent with W-2 data and Department of Labor information obtained by the Tax Commission through information exchange agreements.

The Protest and other information submitted by the taxpayer is tax protestor jargon. The taxpayer raises tired and incorrect issues. The Tax Commission addresses below several of the arguments asserted by the taxpayer sufficient to cover the overall nature of her argument.

IRC § 6201 (d)

The taxpayer makes an argument under the federal provision, Internal Revenue Code Section 6201 (d). However, she does not cite to any authority that requires the State of Idaho or the Tax Commission to apply it to these types of disputes. If it does apply, her arguments fail. The taxpayer takes the position that IRC § 6201 (d) requires the Tax Commission to provide first hand evidence to invalidate her sworn testimony provided in the returns and W-2s and other information provided in this protest. The taxpayer filed zero taxable income returns and accompanying federal Form 4852 to alter the actual W-2s to reflect zero taxable income. The taxpayer does not give any reason or supporting information for the zero entries. The taxpayer's argument is unclear; however, the Tax Commission assumes that the taxpayer's position is that information obtained from the Department of Labor and Internal Revenue Service is not first hand evidence and is insufficient in light of IRC § 6201 (d) to overcome the taxpayer's unsupported conclusions or, in other words, conclusory assertions.

IRC § 6201 (d) reads as follows:

> (d) **Required reasonable verification of information returns**.-- In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return. (emphasis added).

The purpose of IRC § 6201 (d) is to provide a taxpayer with a means to address a "reasonable dispute" with the Internal Revenue Service (IRS). Id. If a "reasonable dispute" exists, the IRS

has the "burden of producing reasonable and probative information" in addition to the information return if the taxpayer has "fully cooperated" with the IRS by providing "access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary." Id. The taxpayer has not provided any information or access thereto to the Tax Commission regarding her tax liability and therefore the Tax Commission has no burden to produce any information other than that derived from the information returns and the Department of Labor. Also, where the taxpayer's only argument is tax protestor nonsense, a "reasonable dispute" under IRC §6201 (d) does not exist. Id.

IRC § 3401 (a) "Wages"

The taxpayer asserts the following:

> Once again, No (piggybacked by Idaho) IRS section 3401 (a) "Wages" were received by us non-privileged private sector Americans. We were NOT and are NOT 3401 (c) "employee" as defined in the Internal Revenue Code. (sic) and we did NOT receive 3401 (a) "wages" as defined in the Internal Revenue Code.

See, "Affidavit of Facts", page 2, dated July 18, 2006.

The taxpayer presents no supporting evidence or reason for this assertion. Nevertheless, the Tax Commission has addressed similar tired arguments from many other tax protestors. The Third Circuit Court of Appeals in United States v. Connor, 898 F.2d 942, 943-944 (3rd Cir. 1990), addressed a similar issue as follows:

> Congress exercised its power to tax income by defining income as, inter alia, "compensation for services, including fees, commissions, fringe benefits and similar items." 26 U.S.C. § 61(a)(1) (Supp. II 1984). Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income. See, e.g., Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir.1986); Connor v. Commissioner, 770 F.2d 17, 20 (2d Cir.1985) (per curiam); Perkins v. Commissioner, 746 F.2d 1187, 1188 (6th

> Cir.1984) (per curiam); Funk v. Commissioner, 687 F.2d 264, 264 (8th Cir.1982) (per curiam).
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> Moreover, Connor's argument has already been rejected by this court. In Sauers v. Commissioner, 771 F.2d 64 (3d Cir.1985), cert. denied, 476 U.S. 1162, 106 S.Ct. 2286, 90 L.Ed.2d 727 (1986), the taxpayer argued, inter alia, that wages are property and therefore are not taxable income. Id. at 66 n. 2. This court agreed with the Tax Court that the taxpayer's "legal contentions were patently frivolous," id. at 66, and affirmed the decision of the Tax Court awarding the Commissioner damages for a frivolous claim under 26 U.S.C. § 6673. Id. at 67-70. We take this opportunity to reiterate that wages are income within the meaning of the Sixteenth Amendment. Unless subsequent Supreme Court decisions throw any doubt on this conclusion, we will view arguments to the contrary as frivolous, which may subject the party asserting them to appropriate sanctions.

The Seventh Circuit Court of Appeals in United States v. Koliboski, 732 F.2d 1325, 1329 n.1 (7th Cir. 1984), addressed the issue in the following manner:

> 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.

In the Sixth Circuit, the court considers such arguments spurious. In Perkins v. Commissioner of Internal Revenue, 746 F.2d 1187, 1188 (6th Cir. 1984), the court said the following regarding the wages as income argument.

> Petitioner's arguments can be characterized as follows: 1) that wages paid for his labor are non taxable receipts, 2) that the Sixteenth Amendment does not permit an imposition of tax on wages and, 3) that he was entitled to a jury trial. Petitioner also raises several other spurious constitutional arguments.
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> [1][2][3] These assertions are totally without merit. First, gross income means all income from whatever source derived including compensation for services. 26 U.S.C. § 61(a) & 61(a)(1); Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 75 S.Ct. 473,

> 99 L.Ed. 483 (1955); Brushaber v. Union Pacific Railroad, 240 U.S. 1, 12, 36 S.Ct. 236, 239, 60 L.Ed. 493 (1916); Funk v. Commissioner, 687 F.2d 264, 265 (8th Cir.1982) (wages received for services are taxable as income). Second, 26 U.S.C. § 61(a) is in full accordance with Congressional authority under the Sixteenth Amendment to the Constitution to impose taxes on income without apportionment among the states. Third, petitioner was not entitled to a jury trial where he elected to contest the Commissioner's deficiency determination in the Tax Court. Wickwire v. Reinecke, 275 U.S. 101, 105 06, 48 S.Ct. 43, 44 45, 72 L.Ed. 184 (1927); Funk v. Commissioner of Internal Revenue, supra. Petitioner's remaining constitutional objections are frivolous. Funk v. Commissioner of Internal Revenue, supra; Beatty v. Commissioner of Internal Revenue, 676 F.2d 150 (5th Cir.1982).
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> [4] The Commissioner has requested the imposition of sanctions because of the patently frivolous nature of this appeal. It appearing that this request is well taken, the Commissioner is awarded double costs pursuant to Rule 38, Federal Rules of Appellate Procedure. Litigants are warned that in future cases in which the lower court has clearly explained, as it has here, the frivolous nature of the taxpayer's claim that earned income is not taxable, we will not hesitate to award actual attorney fees to the Commissioner under Rule 38 as it has been uniformly construed.

Considering the foregoing, the Tax Commission finds no merit in the taxpayer's arguments.

Authority of Tax Commission to Issue Notice of Deficiency Determination

The taxpayer cites 27 CFR Part 70, 26 USC § 7401 and other federal statutes incorrectly to try to establish that the Tax Commission has no authority or basis to issue the NOD.

Contrary to the taxpayer's opinions, the United States Supreme Court discussed the States' authority to tax its residents and nonresidents earning income within the state. In Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221 (1920), the court stated,

> In our system of government the states have general dominion, and, saving as restricted by particular provisions of the federal Constitution, complete dominion over all persons, property, and business transaction within their borders; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of

> taxation in order to defray the governmental expenses. Certainly they are not restricted to property taxation, nor to any particular form of excises. In well-ordered society property has value chiefly for what it is capable of producing, and the activities of mankind are devoted largely to making recurrent gains from the use and development of property, from tillage, mining, manufacture, from the employment of human skill and labor, or from a combination of some of these; gains capable of being devoted to their own support, and the surplus accumulated as an increase of capital. That the state, from whose laws property and business and industry derive the protection and security without which production and gainful occupation would be impossible, is debarred from exacting a share of those gains in the form of income taxes for the support of the government, is a proposition so wholly inconsistent with fundamental principles as to be refuted by its mere statement. That it may tax the land but not the crop, the tree but not the fruit, the mine or well but not the product, the business but not the profit derived from it, is wholly inadmissible.

In Cohn v. Graves, 300 U.S. 308, 57 S.Ct. 466 (1937), the court reiterated the States' taxing authority,

> That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. 'Taxes are what we pay for civilized society,' see Compania General de Tabacos v. Collector, 275 U.S. 87, 100, 48 S.Ct. 100, 105, 72 L.Ed. 177. A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits.

Therefore, by virtue of living within the boundaries of the state of Idaho or by working within those boundaries, the state of Idaho has the right to impose a tax on the income earned within its borders.

United States Constitution

The taxpayer asserts several arguments using at least the Fourth, Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution. She mistakenly uses the

antiquated, abrogated, overruled, modified, distinguished, limited, etc., United Supreme Court case of Boyd v. U.S., 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886), to support her erroneous tax protestor theories. Her arguments are tired, wrong, and have been used incorrectly time and again by other tax protestors. One issue raised by the taxpayer is that she cannot be compelled to give information as it may violate her Fifth Amendment right against self-incrimination. The Tax Commission already has sufficient information from the IRS and the Department of Labor to determine the taxpayer's tax liability. The use of this information is appropriate and is sufficient by itself to substantiate the taxpayer's tax liability. These issues have already been addressed in this decision under the heading IRC § 6201 (d) above. At this juncture, the taxpayer is not being compelled to give information but is instead being given an opportunity to challenge the provisional returns. The taxpayer has failed to provide a specific or articulable challenge to change the NOD.

Additionally, the taxpayer has not provided any identifiable basis for the evaluation of a Fifth Amendment claim. In Idaho State Tax Commission v. Peterson, 107 Idaho 260, 261, 688 P.2d 1165 (1984), the taxpayer therein, Robert L. Peterson, tried to use the Fifth Amendment as a shield against the Tax Commission to preclude him from giving information related to his tax liability. Peterson, through his attorney, stated that his income was from an illegal source and to divulge the source information would incriminate him. Id. The District Court then held an in camera hearing and based upon the discussion therein agreed with Peterson that if he filed the tax returns in questions it may incriminate Peterson. Id. The Supreme Court disagreed and remanded the case to the District Court for further evidence. The Supreme Court's discussion is included herein as follows (although it is a lengthy portion of the case, it addresses many of the taxpayer's concerns and is relevant to this decision):

We turn to the question of whether the fifth amendment prohibits the government from requiring this defendant to file tax returns for the years in question. The fifth amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." The courts have generally rejected the idea that the fifth amendment privilege against self-incrimination protects one from having to file income tax returns. *See, e.g.,* *United States v. Vance*, 730 F.2d 736 (11th Cir.1984); *United States v. Pilcher*, 672 F.2d 875 (11th Cir.), *cert. denied,* 459 U.S. 973, 103 S.Ct. 306, 74 L.Ed.2d 286 (1982); *United States v. Reed*, 670 F.2d 622 (5th Cir.), *cert. denied*, 457 U.S. 1125, 102 S.Ct. 2945, 73 L.Ed.2d 1341 (1982); *United States v. Neff*, 615 F.2d 1235 (9th Cir.), *cert. denied,* 447 U.S. 925, 100 S.Ct. 3018, 65 L.Ed.2d 1117 (1980). Case law holds that the fifth amendment will not justify an outright refusal to file tax returns (*United States v. Sullivan*, 274 U.S. 259, 47 S.Ct. 607, 71 L.Ed. 1037 (1927); *United States v. Neff, supra*), and that "[a] return which supplies none of the requested financial information and asserts broad and unspecific claims is tantamount to a failure or refusal to file" (*Department of Revenue v. Welch*, 293 Or. 530, 651 P.2d 721 (1982)). *See also*, *Department of Revenue v. McCann*, 293 Or. 522, 651 P.2d 717 (1982). In short, while the fifth amendment might in some limited instances be validly raised to block criminal prosecution for failure to file a valid income tax return (*see* *Garner v. United States*, 424 U.S. 648, 96 S.Ct. 1178, 47 L.Ed.2d 370 (1976); *United States v. Raborn*, 575 F.2d 688 (9th Cir.1978)), the right must be asserted at the time of filing and be exercised specifically as to particular questions (*McCann, supra; Welch, supra*).

In this case, defendant Peterson gave little more than his address, in response to the questions presented on the tax form. Questions such as the state of his residence in the previous year, the amount of his income, his capital gains and losses, and his moving expenses, are uniformly rubber-stamped with the printed words "Object-Self-incrimination." It is clear, from the appearance of the tax return as submitted, that no particularized thought was directed by Peterson to the individual questions propounded. We cannot lend credence to such indifferent, unqualified, blanket application of this constitutional protection. As the court stated in *United States v. Neff, supra*, 615 F.2d at 1239:

"[Certain] statutory reporting requirements have been found to violate the privilege, but the reporting schemes in these cases were 'directed at a highly selective group inherently suspect of criminal activities ... in an area permeated with criminal

> statutes....' [Citation.] Questions on income tax returns, in contrast, are 'neutral on their face and directed at the public at large....' [Citations.] ...
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> "To claim the privilege validly a defendant must be faced with ' "substantial *262 **1167 hazards of self incrimination" ' ... that are ' "real and appreciable" and not merely "imaginary and unsubstantial." ' [Citations.] Moreover, he must have 'reasonable cause to apprehend [such] danger from a direct answer' to questions posed to him....
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> "In determining whether such a real and appreciable danger of incrimination exists, a trial judge must examine the 'implications of the question[s] in the setting in which [they are] asked ....' [Citations.] He ' "[m]ust be governed as much by his personal perception of the peculiarities of the case as by the facts actually in evidence." ' [Citations.] If the trial judge decides from this examination of the questions, their setting, and the peculiarities of the case, that no threat of self-incrimination exists, it then becomes incumbent 'upon the defendant to show that answers to [the questions] might criminate him.' [Citations.] This does not mean that the defendant must confess the crime he has sought to conceal by asserting the privilege. The law does not require him ' "to prove guilt to avoid admitting it." ' [Citations.] But neither does the law permit the defendant to be the final arbiter of his own assertion's validity. 'The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself-his say-so does not of itself establish the hazard of incrimination. It is for the court to decide whether his silence is justified ....' [Citations.]"
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> [2] The defendant Peterson's outright refusal to answer any questions on a tax return is not, per se, protected by the fifth amendment. Perchance there is a valid fifth amendment defense to at least some of the information required in Peterson's tax return, especially in light of the fact that, of a group of many "tax protesters" whose claims of privilege were heard together by this judge, this defendant was singled out as having a valid fifth amendment objection. Nonetheless, we have no record of the in-camera hearing, on which to review the validity of this defendant's claim and the propriety of the lower court's use of discretion at that hearing. Since we have no means of evaluating Peterson's assertion of the fifth amendment self-incrimination protection here, we reverse and remand for an in-camera hearing, which hearing we instruct be transcribed for our review.

Id. at 107 Idaho 261, 262.

The taxpayer has not shown how providing required information would present a "real and appreciable" Fifth Amendment issue. Id. Without more, her Fifth Amendment arguments fail.[1]

The taxpayer also refers to the old and tired and wrong argument that somehow the Thirteenth Amendment's involuntary servitude protections are at play in this case. This argument has been rejected by the Courts. Porth v. Brodrick, 214 F.2d 925 (10th Cir. 1954); United States v. Drefke, 707 F.2d 978 (8th Cir. 1983); Ginter v. Southern, 611 F.2d 1226 (8th Cir. 1979); Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972); and see also IRS Revenue Ruling 2005-19, 2005-14 I.R.B. 819.

Conclusion

The arguments presented by the taxpayer do not persuade the Tax Commission that the taxpayer does not have an obligation to file an Idaho income tax return. Furthermore, the taxpayer has provided no documentation or information that would show that the returns prepared by the Bureau were incorrect. It is unreasonable for the Tax Commission to accept the

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[1] The taxpayer also uses the case of Brown v. U.S., 276 U.S. 134, 48 S.Ct. 288 (1928). This is a case where a person in a 1928 ruling tried to assert similar arguments. The United States Supreme Court's holding is similar to the Idaho Supreme Court's decision in Idaho State Tax Commission v. Peterson, infra, and is as follows:

> Whether the papers were produced for the inspection of the court does not appear, but it may well be that they were and that from an examination of them it appeared that the claim of privilege was wholly without merit. In any event it was Brown's duty to produce the papers in order that the court might by an inspection of them satisfy itself whether they contained matters which might tend to incriminate. If he declined to do so, that alone would constitute a failure to show reasonable ground for his refusal to comply with *****291*** the requirements of the subpoena. Consolidated Rendering Co. v. Vermont, supra, pages 552, 553 (28 S. Ct. 178, 52 L. Ed. 327, 12 Ann. Cas. 658). As very pertinently said by the Court of ****145*** Appeals of Kentucky in Commonwealth v. Southern Express Co., 160 Ky. 1, 3, 169 S. W. 517, 518 (L. R. A. 1915B, 913, Ann. Cas. 1916A, 378):
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> '* * * The individual citizen may not resolve himself into a court and himself determine and assert the criminating nature of the contents of books and papers required to be produced.' See, also, Ex parte Irvine (C. C.) 74 F. 954, 960; United States v. Collins (D. C.) 145 F. 709, 712; Mitchell's Case, 12 Abb. Pr. 249, 260-261. And see, generally, Blair v. United States, 250 U. S. 273, 282, 39 S. Ct. 468, 63 L. Ed. 979.
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> From the foregoing we may properly assume in support of the judgment below that either from an inspection of the papers or from other facts appearing there was disclosed to the District Court a want of substance in Brown's claim of privilege. Certainly there is nothing in the record, beyond Brown's mere

taxpayer's zeros in the returns when the zeros are inconsistent with income data obtained through information exchange agreements with other government entities and from the taxpayer herself. It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Id. Since the taxpayer has failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau also added interest, which interest will continue to accrue pending payment of the tax liability pursuant to Idaho Code §63-3045(6), and penalty to the taxpayer's tax deficiency. The Tax Commission finds those additions appropriate as provided for in Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated January 25, 2006, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

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assertion, that affirmatively shows or tends to show that the claim was well founded.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

YEAR	TAX	PENALTY	INTEREST	TOTAL
2004	$ 82	$21	$ 3	$106
2003	216	54	20	290
2002	140	35	20	195
			TOTAL DUE	$591

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

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

_____
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, 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.
_____