



of Idaho. Petitioner stated that since the IRS accepted her 2015, 2016, and 2017 federal income returns as a nonresident alien, Idaho must accept her nonresident alien status too. Petitioner stated she is clearly not the taxpayer on the W-2s filed by [REDACTED] or [REDACTED] and she is not the taxpayer on the forms 1099-G filed by Idaho Department of Labor. Petitioner also stated the W-2 forms from [REDACTED] are in error because there was no remuneration paid in the course of a trade or business. Petitioner's last argument is that the unemployment compensation reported by the Washington State Employment Security Department is not included in gross income because her modified adjusted gross income is less than the base amount as provided in 26 CFR 1.85-1(b)(3).

The Bureau acknowledged Petitioner's protest and referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals sent Petitioner a letter describing the methods available for redetermining a Notice of Deficiency Determination. Petitioner did not respond. Seeing that Petitioner had opportunity to further her position, the Tax Commission decided the matter based on the information provided.

### **LAW AND ANALYSIS**

Petitioner filed Idaho resident income tax returns since before 2001. Petitioner owns property in Latah County Idaho, she claims the homeowner's exemption on a manufactured home in [REDACTED] Idaho, she is registered to vote in Idaho, and she has had an Idaho driver's license since at least 2004. All these facts show that Petitioner was and still is an Idaho resident.

Idaho Code section 63-3002 states, it is the intent of the legislature to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the income of nonresidents which is the result of activity within or derived from sources within this state. Therefore, because Petitioner is a resident of Idaho, she is required to pay an income tax measured by her taxable income.

Petitioner claims she has no income or that her income is not subject to tax because she is a nonresident alien and her income came from foreign corporations. The notion that Petitioner is a nonresident alien is absurd on its face. Petitioner has lived and resided in Idaho for many years. *See Caniff v. Commissioner*, No. 94–2937, 1995 WL 216861, U.S.App. LEXIS 8613 (7th Cir. April 6, 1995); *LaRue v. U.S.*, 959 F.Supp. 959, (1997). Furthermore, a nonresident alien cannot, by definition, reside in the United States for more than 31 days. *See Internal Revenue Code § 7701(b)(1)(B)*.

Regardless, Petitioner lived in Idaho. Idaho's jurisdiction to tax is not dependent upon whether an individual is a citizen of the United States. Idaho's jurisdiction to tax is based on the fact that the individual lives within the borders of Idaho or had income from Idaho sources. The Idaho Legislature has clearly set forth that the Idaho income tax applies to residents of this state. The Legislature defined the term resident, and Petitioner has presented no evidence to show that she was not a resident as that term is defined.

Petitioner contends that her employer is a foreign corporation and as such they are not in a trade or business within the United States. Petitioner further contends that with her status as a nonresident alien the income she received from her employer is exempt from tax. Suffice it to say, Petitioner's employer is not a foreign corporation, but is a Washington business that operates in Idaho. Since it is already established that Petitioner is a resident of Idaho, all her income, from whatever source, is reportable to and taxable by Idaho.

Petitioner is correct that she did not receive the income reported on the W-2s from [REDACTED] and [REDACTED], and the unemployment compensation from Idaho; Petitioner's spouse received the income. Petitioner reported on her income tax returns that she was married. Idaho is a community property state. As such, half of the income Petitioner's spouse earned is attributable to her, and half of Petitioner's income is attributable to her spouse. Therefore, when

filing her Idaho income tax return as married filing separate, Petitioner must include half of the income earned by her spouse. See Idaho Code section 32-906 and *Parker v. Idaho State Tax Com'n*, 148 Idaho 842 (2010).

Petitioner also claimed that her unemployment compensation from Washington state was not taxable. Petitioner claims the unemployment compensation she received was less than the base amount and therefore not taxable. Here Petitioner fails on two counts. First, if calculated correctly, Petitioner's modified adjusted gross income is substantially greater than the base amount Petitioner claims, which causes her unemployment compensation to be taxable. Second, since Petitioner is married and she did not file a married filing joint return with her spouse, for purposes of unemployment compensation, Petitioner's base amount is zero. (See Treas. Reg. §1.85-1(b)(3)(ii)). This also makes all of Petitioner's unemployment compensation taxable.

Petitioner's protest contained mostly frivolous tax protester material. Such "causes and beliefs" (arguments) have repeatedly been rejected by the courts in deciding cases arguing against the income tax. See *Sego v. Commissioner*, 114 T. C. 604 (2000); *Nagy v. Commissioner*, T. C. Memo 1996-24; *Scott v. Dept. of Taxation*, 2008 WL 4542978 (Vt.); *United States v. Jagim*, 978 F.2d 1032, 1036 (8th Cir. 1992). Petitioner has not shown that she did not receive the income, nor has she cited relevant authority stating that the income she received was not subject to Idaho income tax.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-75 n.2, (Ct. App. 1986); *Albertson's Inc., v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the taxpayer to show that the tax deficiency is erroneous. *Parsons*, Id. Petitioner did not meet her burden; therefore, absent competent evidence to the contrary, the Notice of Deficiency Determination must be upheld on review.

**CONCLUSION**

Petitioner lives in Idaho; she is an Idaho resident. Petitioner received compensation from her employer; Petitioner had income. Petitioner’s Idaho income tax returns did not report all her income. Petitioner provided nothing creditable that established her income was not taxable. Accordingly, the Tax Commission upholds the Notice of Deficiency Determination.

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

WHEREFORE, the Tax Commission AFFIRMS the Notice of Deficiency Determination dated June 18, 2019, directed to [REDACTED].

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>
2015	\$2,272	\$568	\$392	\$3,232
2016	2,095	524	284	2,903
2017	2,601	650	267	<u>3,518</u>
			TOTAL DUE	<u>\$9,653</u>

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

IDAHO STATE TAX COMMISSION

[REDACTED]

[REDACTED]

[REDACTED] No.

[REDACTED]

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