

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 13387
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On December 14, 1998, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting Idaho income taxes, penalty and interest in the amount of \$39,522 for the 1988 through 1996 taxable years. A timely appeal and petition for redetermination was filed by the taxpayer. An informal conference was held by telephone on June 8, 2001. The Tax Commission, having reviewed the file, hereby issues its decision.

This is a nonfiler case. The taxpayer has not filed Idaho individual income tax returns for the 1988 through 1996 taxable years. During these years the taxpayer resided in Idaho and operated a business known as [Redacted]. [Redacted] has never filed any federal or state corporate income tax returns and appears to be a shell corporation created by Mr. [Redacted] to disguise the fact that he was receiving income for personal services.

In an attempt to determine whether Mr. [Redacted] met the minimum filing amount set out in Idaho Code § 63-3030(a), the Commission's Tax Discovery Bureau summoned from [Redacted] Bank a copy of an automobile loan application filed by Mr. [Redacted] on October 26, 1991. On that loan application Mr. [Redacted] claimed that he was the owner of [Redacted] and that he had owned that company for the past three years and nine months. He also indicated that he received salary or wages from [Redacted] of \$3,000 per month. Based on this information, the Tax Discovery Bureau determined that Mr. [Redacted] had earned taxable

income of \$36,000 per year from 1988 through 1996. The Notice of Deficiency Determination that is the subject matter of this administrative protest was then issued to Mr. [Redacted].

In his letter of protest and subsequent correspondence, the taxpayer maintains that he did not earn sufficient income during any of the years under review to meet the statutory requirement to file an Idaho individual income tax return. In fact, the taxpayer asserts that during 1988, 1989 and 1990 he did not work at all. He claims that in 1991 he “did manage to do some work . . . , but only briefly. That work provided the amount on the [Redacted] Bank loan application.” March 11, 2001 letter from [Redacted]. The taxpayer then goes on to state that the income information contained in the loan application was only “a snapshot in time.” Id.

The taxpayer’s contention that he did virtually no work during any of the years under review is not particularly credible. Unfortunately, except for the [Redacted] Bank loan application, the Tax Commission’s audit staff has been unable to locate any documentary evidence to support the tax deficiency determination. The audit staff did obtain verification from [Redacted] that Mr. [Redacted] performed services for that corporation at some point in the late 1980s or early 1990s. However, because of the amount of time that has passed, [Redacted] was unable to produce any federal form 1099s, payroll documents, or other documents to establish exactly when Mr. [Redacted] performed these services or how much he was paid.

Because of the lack of any verifiable evidence other than the 1991 loan application, the Tax Commission is unable to find that Mr. [Redacted] earned income in excess of the minimum filing amounts for the 1992 through 1996 taxable years. However, the Commission finds that the [Redacted] Bank loan application signed by Mr. [Redacted] is a sufficient factual basis for upholding the Notice of Deficiency Determination for the 1988 through 1991 taxable years. On that application form Mr. [Redacted] admits that he is earning \$3,000 per month through his ownership of [Redacted]. The form, which was signed on October 26, 1991, also indicates that

Mr. [Redacted] had owned [Redacted] for the past three years and nine months. This would cover the 1988 through 1990 taxable years, plus the first nine months of the 1991 taxable year. The information contained on the loan application is also consistent with the anecdotal evidence indicating that Mr. [Redacted] performed services for [Redacted] in the late 1980s or early 1990s. Finally, the fact that [Redacted] has never filed a federal or Idaho corporate income tax return, and the fact that the company appears to be nothing more than a shell corporation through which Mr. [Redacted] performed personal services, makes Mr. [Redacted] course of conduct highly suspect. C.f., Pittman v. Commissioner of Internal Revenue, 100 F.3d 1308, 1319 (7th Cir. 1996) (In a tax fraud case, the intent to defeat or evade taxes may be inferred from conduct such as the concealment of assets or covering up sources of income, handling one's affairs to avoid making the records usual in transactions of the kind, or any other conduct the likely effect of which would be to mislead or to conceal.). The taxpayer's claim that he earned no income in 1988 through 1990, and very little income in 1991, is simply not credible in light of the statements he made on the loan application form. The Tax Commission finds that Mr. [Redacted] did earn taxable income in 1988 through 1991 in the amount he set out in the October 26, 1991 loan application filed with [Redacted] Bank.

Mr. [Redacted] also raises a constitutional challenge to the entire Idaho income tax. According to Mr. [Redacted], "Idaho has no constitutional authority to tax income of any kind." March 11, 2001 letter from [Redacted]. Mr. [Redacted] constitutional challenge is not well taken. The Idaho Supreme Court has already determined that the Idaho income tax statutes are constitutional, and that it was within the plenary power of the Idaho Legislature to enact a state income tax even though the Idaho Constitution did not expressly authorize the tax. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932). According to the Court in Diefendorf:

“The tax in question is by a method other than those mentioned in section 2, article 7 of the [Idaho] Constitution, but is not on that account unconstitutional, because it is not necessary that the Constitution expressly authorize the legislature to enact each and every kind of tax adopted by it. An act is legal when the Constitution contains no prohibition against it.”

Id. at 637, 10 P.2d at ___ (quoting Independent School Dist. v. Pfof, 51 Idaho 240, 252, 4 P.2d 893, 897 (1931)). See also Idaho State Tax Com’n v. Payton, 107 Idaho 258, 259, 688 P.2d 1163, 1164 (1984) (Taxpayer’s contention that the imposition of an income tax is prohibited by the Idaho and United States Constitutions is without merit.).

The Notice of Deficiency Determination issued by the Tax Commission’s audit staff is presumed to be correct, and Mr. [Redacted] bears the burden of establishing that the deficiency determination is factually or legally incorrect. See Albertson’s Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984) (a determination of the State Tax Commission is presumed to be correct); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986) (a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous). Mr. [Redacted] has not met his burden of establishing that the Notice of Deficiency Determination is incorrect as it relates to the 1988 through 1991 taxable years.

WHEREFORE, the Notice of Deficiency Determination dated December 14, 1998, is hereby MODIFIED, and as so Modified, is APPROVED, AFFIRMED AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1988	\$2,334	\$584	\$2,799	\$ 5,717
1989	2,317	579	2,503	5,399
1990	2,303	576	2,210	5,089
1991	2,239	560	1,883	<u>4,682</u>

TOTAL AMOUNT DUE

\$20,887

Interest is calculated through November 30, 2001, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

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 enclosed with this decision.

DATED this _____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, 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]

[Redacted] [REDACTED]

ADMINISTRATIVE ASSISTANT 1