

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NOS. 14597 & 14852
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On January 12, 2000 and April 12, 2000, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued Notices of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1995 through 1996 and 1997 through 1998, respectively, in the total amount of \$8,591 and \$31,946, respectively.

On March 15, 2000 and June 14, 2000, the taxpayers filed timely appeals and petitions for redetermination. The taxpayers requested a hearing, which was held on July 11, 2000, and attended by Mr. [Redacted]; [Redacted], Tax Policy Specialist; and [Redacted], Legal Intern. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers are appealing two Notices of Deficiency Determination issued by the Tax Discovery Bureau (Bureau). The first Notice of Deficiency Determination mailed to the taxpayers on January 12, 2000, [Redacted] that a change had been made to the taxpayers' 1995 and 1996 federal income tax returns. The Bureau reviewed the changes and determined those same changes should be made to the taxpayers' Idaho income tax returns.

The second Notice of Deficiency Determination mailed to the taxpayers on April 12, 2000, was sent to the taxpayers based upon their response to the Bureau's inquiry into the taxpayers' filing requirement. The taxpayers stated they had no filing requirement. The Bureau disagreed with that statement since the information available showed the taxpayers received wages in excess of Idaho's filing requirement and the taxpayers had a chiropractic practice in the Boise area.

In addressing the first Notice of Deficiency Determination, the taxpayers' argument is two-fold. The taxpayers' initial claim is that the information [Redacted] is not a "final federal determination." Therefore, the Tax Commission has no basis for making an adjustment to their Idaho return per Idaho Code section 63-3068. The taxpayers' second argument is that they have no filing requirement for federal purposes; consequently, they can have no filing requirement with Idaho per Idaho Code section 63-3030.

Idaho Code section 63-3068(f) defines the term "final federal determination." It states,

For purposes of this subsection the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service.

The Tax Commission [Redacted]. The information the Tax Commission received showed the adjustments to the taxpayers' returns remain unchanged. At the hearing, Mr. [Redacted] stated they filed an amended return with the IRS for 1996 but had not received a response from the IRS. The Tax Commission asked Mr. [Redacted] for a full copy of the amended return submitted to the IRS. The taxpayers did not provide the Tax Commission with a copy of their amended federal return.

Since the taxpayers have not provided anything to show the adjustments at the federal level have been changed or are pending, they have not met their burden of proof that the information received by the Tax Commission was not a final federal determination. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Therefore, the Tax Commission finds this argument of the taxpayers unsubstantiated and unsupported.

The taxpayers' second argument for the first Notice of Deficiency Determination was that they are not required to file Idaho income tax returns as provided for in Idaho Code section 63-3030. The taxpayers stated that Idaho follows the Internal Revenue Code (IRC) in determining whether an Idaho income tax return is required to be filed. They stated in relying on

the IRC, the state made a statutory construction error by referencing IRC section 6012(a)(1) in Idaho Code section 63-3030. The taxpayers stated that IRC section 6012(a)(1) makes no requirement to file a federal income tax return. Rather it is IRC section 6011 that imposes the federal filing requirement. Since the Idaho Code referenced IRC section 6012(a)(1), Idaho has no requirement to file.

IRC section 6011 states the "General requirement of return, statement, or list." Subpart (a) states,

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

This section provides for persons liable for any tax to make a return or statement in the form as directed by the Secretary.

IRC section 6012(a)(1) entitled, "Persons required to make returns of income" states in pertinent part,

(a) General rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual – . . .

The Tax Commission views these two sections of the IRC as complementing each other. IRC section 6011 states that returns are required to be in a format specified by the Secretary. IRC section 6012 states that returns are required by every individual that meets the gross income requirements of section 6012. Therefore, section 6012 states returns are required by individuals and section 6011 states that the return required by 6012 must follow a certain form for federal

purposes. The Tax Commission does not see where there is any problem with the statutory construction of Idaho Code section 63-3030 referencing IRC section 6012(a)(1) in identifying individuals required to file Idaho individual income tax returns.

The taxpayers stated the IRC does not provide a requirement to file. On the contrary, the court in In Re: Peter Kay Stern, 114 F.3d 1177 (4th Cir. 1997) stated,

. . . the duty to file returns and pay income taxes is clear. Section 1 of the Internal Revenue Code imposes a federal tax on the taxable income of every individual. Section 63 defines "taxable income" as gross income minus allowable deductions. Section 61 states that "gross income means all income from whatever source derived," including compensation for services. Sections 6001 and 6011 provide that a person must keep records and file a tax return for any tax for which he is liable. Finally, § 6012 provides that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. The duty to pay federal income taxes therefore is "manifest on the face of the statutes, without any resort to IRS rules, forms or regulations."

In addition to the statutory construction problem, the taxpayers stated they did not have income for federal purposes and therefore they were not required to file a federal income tax return. And since Idaho Code section 63-3030 states that "every resident individual required to file a federal return" is required to file an Idaho return, they were not required to file an Idaho return.

The taxpayers stated they did not have sufficient gross income to meet the threshold requirements of IRC 6012(a)(1). The taxpayers stated the U.S. Supreme Court defined income in Eisner v. Macomber, 252 U.S. 189, 207 (1920), as "the gain derived from capital, from labor, or both combined." From here the taxpayers stated that income is gain and income is derived from a source and that IRC section 61 (a)(1)-(15) provides a list of sources from which income can be derived. The taxpayers stated that compensation for services as listed in IRC section 61(a)(1) is a source of income but not the income. They said, "The fundamental error common [to] the application of § 61 IRC is the failure to recognize the distinction between the source of

income and the derived income." The taxpayers stated it is arguable that they may have a source as described in IRC section 61 but they lack the income.

It is not totally clear what the taxpayers are saying in this argument; nevertheless, the taxpayers have not provided any documentation to show there was no income from their source or sources of income. Mr. [Redacted] is a practicing chiropractor in Boise and Mrs. [Redacted] received wages from an Idaho employer. The courts have clearly stated that wages are income. United States v. Koliboski, 732 F.2d 1328, 1330 n.1 (7th Cir. 1984); United States v. Lawson, 670 F.2d 923, 925 (10th Cir. 1982); United States v. Burus, 633 F.2d 1356, 1361 (9th Cir. 1980); Mitchell v. Agents of State, 105 Idaho 419, 425 (1983); State v. Staples, 112 Idaho 105, 107 (Ct. App. 1986); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 575 (Ct. App. 1986). One would also assume that Mr. [Redacted] received compensation for the services he provided as a chiropractor, which is part of gross income. IRC section 61(a)(1). Therefore, it appears that the taxpayers had income on which the tax is measured. The Tax Commission does not find any validity to this argument of the taxpayers.

The taxpayers expanded and presented additional arguments for the tax years addressed in the Notice of Deficiency Determination dated April 12, 2000. Their primary argument, not being required to file, was the same argument as presented for the first Notice of Deficiency Determination. The Tax Commission addressed that argument above and finds it unnecessary to replew that ground.

However, as part of their argument of not being required to file, the taxpayers pointed out that the income tax is an excise tax. Citing Flint v. Stone Tracy Co., 220 U.S. 107 (1911), the taxpayers stated that as an excise tax, the tax is laid upon the manufacture, sale or consumption of commodities, upon licenses and upon corporate privileges. The taxpayers stated that, as a

licensed chiropractor in the state of Idaho, Mr. [Redacted] exercises a "state" granted privilege not a federal privilege. Since Mr. [Redacted] practice of chiropractic is not a federal privilege it does not come within the statute's federal jurisdiction for income tax (excise) purposes. In essence, the taxpayers claimed the federal government has no jurisdiction to impose an excise tax on his practice of chiropractic because it does not fall within the definition of interstate commerce and is therefore limited by Article 1, Section 8 of the U.S. Constitution.

The taxpayers' reference to an excise tax comes from the argument of whether the income tax is considered a direct tax or an indirect tax. Both the taxpayers and the Tax Commission agreed that the income tax is an excise tax and comes under the class of indirect taxes. However, the taxpayers believe that the federal government must grant a privilege or a right before it can tax something. The Tax Commission does not agree.

The only express limitation on the power of Congress to impose indirect taxes is that the tax must be uniform. Congress may select any object, occupation or transaction as the subject matter of an indirect tax. It is immaterial that the subject matter may not be within Congress's regulatory power but is within the authority of the states to control. The power of Congress to tax is far broader than its authority to regulate. United States v. Robinson, United States v. Shivers, United States v. Rogers, 107 F.Supp. 38 (1952).

The authority conferred upon Congress by Section 8 of Article I is exhaustive and embraces every conceivable power of taxation. Marco J. Sortillon v. Commissioner of Internal Revenue, 38 T.C.M. (CCH) 1097 (1979).

Therefore, regardless of whether the privilege exercised has been granted by the federal government, Congress can impose a tax on the income derived from that activity. The fact that a state may grant a license to practice within the state has nothing to do with the federal

government's ability to tax income. The Tax Commission does not find this argument persuasive as a reason the taxpayers are not required to file either federally or for the state of Idaho.

The taxpayers made a statement about the voluntary nature of income taxes. They stated, "participation in a tax is voluntary for those who are not required to participate." The taxpayers stated the determining factor then becomes who is required, by statute, to participate. Those who participate without the statutory requirement do so voluntarily.

This argument is just another step in the argument that the IRC does not require the taxpayers to file. The IRC requires that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. IRC section 6012. Every individual, which would seem to include the taxpayers, is required to participate in the filing of income tax returns. Therefore, the Tax Commission finds this argument without merit.

The taxpayers argued the meanings of different words and phrases such as individual, income, compensation, compensation for labor vs. compensation for professional services, and gain. Each of these arguments is tedious and the logic is arduous and self-serving to the taxpayers. In most, if not all, of their arguments the taxpayers cite phrases or sentences of court cases to support their contention. However, those cites are taken out of context to fit their particular need or are totally distinguishable from the case at hand.

An example is the taxpayers' argument regarding the term "individual." The taxpayers stated the IRC does not define individual, therefore the common legal definition applies. The taxpayers stated an individual is a single member of a group. The taxpayers then rationalized that the term individual as used in the IRC means an individual already subject to the IRC by membership in the groups defined (trusts, estates, partnerships, associations, companies, or

corporations). The taxpayers conceded the Idaho Code defines an individual as a "natural person" and thereby includes natural persons within the taxing authority. However, since a natural person does not exist in the federal code, they are not individuals as the term is used in the federal code and cannot be included as individuals in IRC section 6012(a)(1). The Tax Commission finds these arguments illogical, self-serving, and unpersuasive.

The taxpayers' most recent argument was that the Tax Commission did not issue its decision in this matter within the 180-day period for issuing decisions as provided in Idaho Code section 63-3045B. Idaho Code section 63-3045B, states in pertinent part,

(3) When a perfected protest has been filed, the state tax commission shall, within fourteen (14) days thereof, provide the taxpayer with a written acknowledgement of the protest. After the acknowledgement, a final decision of the tax commission must be rendered within one hundred eighty (180) days from either:

(a) A request in writing, in a form prescribed by rules of the tax commission, from the taxpayer for a final decision on that issue; if the taxpayer requests such a decision, the tax commission may refuse to accept additional evidence or documentation or refuse to allow an appearance at any proceeding with the commission or any representative of the commission during such one hundred eighty (180) day period.

(b) The conclusion of any hearing pursuant to section 63-3045(2), Idaho Code, and the taxpayer has not requested or received any extension of time to present additional evidence or testimony.

During the hearing Mr. [Redacted] asked that the Tax Commission allow him the opportunity to discuss any and all of their arguments with which the Tax Commission disagreed. In letters subsequent to the hearing, the taxpayers asked for a continuing dialogue with the Tax Commission in order to come to a common understanding. The Tax Commission believes these requests constituted a request by the taxpayers for an extension of time to present evidence or testimony as stated in Idaho Code section 63-3045B(3)(b). Therefore, the Tax Commission is of the opinion the 180-day period of section 63-3045B was suspended.

WHEREFORE, the Notices of Deficiency Determination dated January 12, 2000 and April 12, 2000, are hereby APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$ 0	\$ 0	\$ 0	\$ 0
1996	6,693	335	2,371	9,399
1997	11,434	2,859	3,053	17,346
1998	11,775	2,944	2,236	<u>16,955</u>
			TOTAL DUE	<u>\$43,700</u>

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

An explanation of the taxpayers' right to appeal this decision is included 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