

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14879
[REDACTED],)	
)	DECISION
Petitioner.)	
)	
)	
)	

On June 7, 2000, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1993 through 1998 in the total amount of \$32,297.

On June 26, 2000, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather submitted documents and other information presenting her position. The Tax Commission, having reviewed the file, hereby issues its decision.

While reviewing the Tax Commission's records, the Tax Discovery Bureau (Bureau) found that the taxpayer stopped filing Idaho individual income tax returns after filing her 1992 return. The Bureau did some research on the taxpayer and sent the taxpayer a letter asking about her Idaho filing requirements. The taxpayer returned the letter and questionnaire stating that she was a "U.S.A. National, a.k.a., a natural born free Citizen constitutionally." She stated she was not a federal U.S. citizen or resident or resident alien. The taxpayer stated further that she planned to file "lawful non-resident alien Idaho return[s]."

The Bureau did further research on the taxpayer and found that the taxpayer deposited over \$50,000 into a bank account throughout 1997. The taxpayer never filed the returns she stated she planned on filing, so the Bureau prepared returns for the taxpayer and sent her a

Notice of Deficiency Determination. The taxpayer returned the Notice of Deficiency Determination with the following statement.

This instrument is hereby REFUSED FOR FRAUD, WITHOUT DISHONOR AND IS HEREBY CANCELLED, based upon state statutes and the Uniform Commercial Code which allow(s) the cancellation and refusal of instruments which are not signed and are non bona fide or fraudulent in nature. If you disagree with this refusal or cancellation in any way, you have (10) days in which to respond. Otherwise this matter shall be considered closed.
ALL RIGHTS RESERVED, WITHOUT PREJUDICE UCC 1-207

The Bureau acknowledged the taxpayer's statement as a protest and forwarded the taxpayer's case for administrative review. The Tax Commission sent the taxpayer a letter setting forth two alternative methods for redetermining the Notice of Deficiency Determination. The taxpayer responded by letter challenging the jurisdiction of the Tax Commission and objecting by reason of her status as a "NON-RESIDENT ALIEN," a natural born free citizen constitutionally. The taxpayer also continued citing sections of the UCC saying that she did not sign anything that would have created a liability with the Tax Commission.

In addition to being a non-resident alien and not following the Uniform Commercial Code (UCC), the taxpayer presented various other written arguments. Among those arguments were that wages are not income as defined by the Supreme Court; that paying taxes is voluntary according to the Internal Revenue Code (IRC); and that the definition of income means corporate profits. The taxpayer cited numerous Supreme Court cases, Internal Revenue Code sections, and Idaho statutes in support of those arguments.

The taxpayer began with a jurisdictional argument that she was not a "taxpayer" as defined in the federal code in section 7701(a)(14) and therefore not under the jurisdiction of the Idaho State Tax Commission. The Tax Commission finds reliance on this argument misplaced. Internal Revenue Code (IRC) section 7701(a)(14) defines the term taxpayer as any person subject to any internal revenue tax. However, for Idaho income tax purposes a "taxpayer" is

defined in Idaho Code section 63-3009 as any person subject to a tax imposed by the Idaho income tax act or required by the provisions of the act to file an income tax return, report income, or pay a tax. The taxpayer's reliance on a federal definition is misplaced when the same term is defined in the Idaho statute.

Idaho's jurisdiction to tax is not dependant upon whether an individual is a citizen of the United States. Idaho's jurisdiction to tax is found in Idaho Code section 63-3002, which states in pertinent part,

It is the intent of the legislature by the adoption of this act, . . . to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. . . .

In addition, the Supreme Court stated in Shaffer v. Carter, 252 U.S. 37, 52 (1920),

And we beem [sic] it clear, upon principle as well as authority, that just as a state may impose general income taxes upon it own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein; enforcing payment, so far as it can, by the exercise of just control over persons and property within its borders.

In New York, ex rel Cohn v. Graves, 300 U.S. 308, 312-313 (1937), the Court stated,

That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protections of its laws are inseparable from the responsibility of the costs of government.

Therefore, since the taxpayer resided within the borders of the state of Idaho, the taxpayer does come under the jurisdiction of the state of Idaho and therefore the jurisdiction of the Tax Commission.

The taxpayer made references to the Uniform Commercial Code (UCC) regarding consideration, performance, and presentments. The taxpayer stated that the Tax Commission

provided no consideration to her or provided any performance to which she would be indebted. This she implies is required per the UCC.

The taxpayer's references to the UCC suggest the state of Idaho must conform to the UCC in its dealings with taxpayers. However, Idaho Code section 28-1-102 sets out the purpose of the UCC. It states in pertinent part:

Purposes - Rules of construction - Variation by Agreement.- (1)

This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions. (Emphasis added.)

The Uniform Commercial Code applies only to commercial transactions. It has no bearing on a determination of tax matters. Therefore, the Tax Commission finds the UCC argument inapplicable to the matter at hand.

The argument that wages are not income has been long settled in the courts. The U.S. Supreme Court stated in Merchant's Loan and Trust Company v. Smientanka, 255 U.S. 509, 509-510 (1921) that income is the gain derived from capital, from labor, or from both combined. Since wages are the gain received from labor, wages clearly fall within the court's definition of income.

In United States v. Koliboski, 732 F.2d 1328, 1330 n.1 (7th Cir. 1984), the court stated,

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 are already 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.
(emphasis in original.)

The taxpayer furthered her argument on income by stating that, since the intent of the Idaho legislature was to make the provisions of the Idaho Code identical to the Internal Revenue Code, Idaho's definition of income has to have the same meaning as that for federal. The taxpayer stated that the Supreme Court defined "income," within the meaning of the 16th Amendment, to mean corporate profits. The taxpayer stated that since the IRC did not define income it must rely on the definition provided by the Supreme Court. The taxpayer theorized that, since she had no corporate profits, she had no income that was taxable under Idaho law.

The taxpayer's reference to "income," as used in the 16th Amendment and defined by the Supreme Court, to mean only corporate profit is totally unfounded. The taxpayer relies on a statement made by the Supreme Court in Merchants' Loan and Trust Company, 255 U.S. at 518-519, where the Court said the word income must be given the same meaning in all of the income tax acts that was given to it in the Corporation Excise Tax Act of 1909. By this statement the taxpayer assumed income to mean only corporate profits. However, the Court did not say income was solely corporate profit. The Court stated that the Corporation Excise Tax Act of August 5, 1909 defined the word income. The Court said it was obvious that the decisions written in developing the definition of the word "income" as used in the Corporation Excise Tax Act of 1909 had the same meaning and content in the Income Tax Acts of 1913, 1916 and 1917. This does not mean that income is only corporate profit. It means income is defined as stated above: gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. The Tax Commission finds this argument misapplied and misconstrued.

The taxpayer stated that "income" is not defined in the IRC. Technically, the taxpayer is correct; however, what is important is that the IRC defines "taxable income." IRC section 63 states, "the term 'taxable income' means gross income minus the deductions allowed by this chapter (other than the standard deduction)." Section 61 of the IRC defines "gross income." It states, "gross income means all income from whatever source derived." The section then goes on giving a list of nonexclusive examples of items that make up gross income. The key here is that income does not have to be defined as long as one knows how to arrive at "taxable income."

Since Idaho Code section 63-3002 follows the IRC relating to the measurement of taxable income and with taxable income defined in the IRC, a starting point is created for determining Idaho taxable income. Therefore, the taxpayer's argument that income is not defined has little relevance in the determination of Idaho taxable income. The Tax Commission finds the income definition argument, as with all the arguments presented thus far by the taxpayer, frivolous and without merit.

The taxpayer argued that the IRC states the paying of taxes is based on voluntary compliance, not compulsory compliance. It appears this line of thinking comes from the Treasury Regulations rather than the IRC. The regulations state in section 601.602(a), "The tax system is based on voluntary compliance, and the taxpayers complete and return the forms with payment of any tax owed." This statement along with statements made by the courts have been misconstrued or taken out of context. The entire section of the regulation reads,

The Internal Revenue Service develops forms and instructions that explain the requirements of the Internal Revenue Code and regulations. The Service distributes the forms and instructions to help taxpayers comply with the law. The tax system is based on voluntary compliance, and the taxpayers complete and return the forms with payment of any tax owed.

Read in context, the regulation statement has the meaning that taxpayers are to volunteer their information in order to comply with the law. The law states a tax must be paid. Citizens and residents voluntarily comply with the law rather than being told what is owed as their tax.

A U.S. Supreme Court quotation frequently taken out of context is the following: "Our tax system is based upon voluntary assessment and payment and not upon distraint." Flora v. United States, 362 U.S. 145, 175 (1960). This quotation is out of context, because the court first noted that the government could collect the tax by exercising its power of distraint, "but we cannot believe that completing resort to this extraordinary procedure is either wise or in accord with congressional intent." *Id.* at 175. In other words, Congress can collect taxes by force, but the court believed that Congress intended to give taxpayers an opportunity to comply before exercising that force.

This is better explained in Helvering v. Mitchell, 303 U.S. 391, 399 (1938), (which was cited in the Flora decision), as follows:

In assessing income taxes, the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil.

When confronted by claims that income taxes are "voluntary," courts readily explain that the payment of income tax is mandatory, not optional.

Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary. United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), (per curiam); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988). The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), 'requires that every individual who earns a threshold level of income must file a tax return.' United States v. Pottorf, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to criminal penalty. *Id.*, (citing 26 U.S.C. § 7203)." United States v. Hartman, 915 F.Supp. 1227 (M.D.Fla. 1996).

The federal income tax is not voluntary, and a person may not elect to opt out of the federal tax laws by a unilateral act of revocation and rescission. See, e.g., *Lesoon v. Commissioner of Internal Revenue*, 141 F.3d 1185, 1998 WL 166114 (10th Cir. 1998); *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993); *Damron v. Yellow Freight System, Inc.*, 18 F. Supp. 2d 812, 819-20 (E.D. Tenn. 1998), *aff'd*, 188 F.3d 506 (6th Cir. 1999)." United States v. John L. Sasscer, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000).

Considering the above cited cases along with numerous others, it is the Tax Commission's position that income tax returns are required to be filed by individuals whose income exceeds the minimum filing requirements of Idaho Code section 63-3030.

The Tax Commission reviewed the returns prepared by the Bureau. Since the taxpayer provided nothing to show the returns were inaccurate or incorrect, the Tax Commission finds the returns to be a reasonable representation of the taxpayer's taxable income for the years in question. The Bureau added interest and penalty to the taxpayer's returns per Idaho Code sections 63-3045 and 63-3046. The Tax Commission finds both these additions appropriate for the matter at hand.

WHEREFORE, the Notice of Deficiency Determination dated June 7, 2000, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1993	\$3,494	\$874	\$2,085	\$ 6,453
1994	3,478	870	1,812	6,160
1995	3,465	866	1,503	5,834
1996	3,453	863	1,212	5,528
1997	3,433	858	906	5,197
1998	3,420	855	638	<u>4,913</u>
			TOTAL DUE	<u>\$34,085</u>

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 _____, 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