

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15045, 15046 & 15047
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On July 7, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission issued three Notices of Deficiency Determination to [Redacted] (taxpayers), asserting income tax, penalty and interest for 1992 and 1994 through 1997 taxable years. The deficiency proposed for Mr. [Redacted], based on his income, included taxable years 1994 through 1997 for tax, interest and penalty amounting to \$14,497. Mrs. [Redacted] proposed deficiency included taxable years 1994 through 1996 for a total of \$6,401. Staff determined a joint deficiency for the taxable year 1992 of \$857.

On August 28, 2000, the taxpayers filed a timely appeal and joint petition for redetermination. The taxpayers requested an informal conference to discuss all three Notices of Deficiency Determination. The Tax Commission conducted the informal conference on January 10, 2001.

During the informal conference, the taxpayers submitted several documents: a listing of cases discussing the authority of public officials to act; photocopies of newspaper and news journal articles discussing the Internal Revenue Service; a photocopy of section 1132.75 of the IR Manual regarding United States citizens residing in foreign countries and nonresident aliens subject to federal income tax; a letter from the United States Department of the Treasury to Representative [Redacted] dated August 16, 1995; and a letter from the United States Department of the Treasury to the taxpayers dated November 14, 1995, stating that the federal alcohol and tobacco taxes are mandatory. The Commission received these submissions and included the documents in the file.

The taxpayers also submitted several postconference documents. The postconference

documents consisted of: four letters from the Internal Revenue Service to the taxpayers; copies of assessments the taxpayers received from the Internal Revenue Service; an affidavit the taxpayers submitted to the Internal Revenue Service; and a response letter from Dirk Kempthorne to the taxpayers. The Commission received and included these documents in the file on January 16, 2001.

The Commission has reviewed the entire file in this matter, is advised of its contents, and now issues its decision. For the reasons set forth below, the Commission affirms the Notices of Deficiency Determination issued on July 7, 2000, with interest updated through May 4, 2001.

This is a nonfiler case. The taxpayers did not file Idaho income tax returns for 1992 and 1994 through 1997 taxable years. Based on information obtained by the Tax Commission's Enforcement Specialist, it appeared the taxpayers, who live in [Redacted], Idaho, did in fact have an Idaho income tax filing requirement for the taxable years at issues.

When contacted about their apparent Idaho income tax filing requirements, the taxpayers responded by submitting a written petition stating they were not required to file federal and state income tax returns. The taxpayers believe they are not required to file or pay federal and Idaho income taxes because neither the Idaho or federal tax code specifically provides that individuals are "liable" for individual income tax. The taxpayers note that the federal and state codes "impose" a tax, but state "It is not enough to 'impose' a tax. You must also make someone 'liable' in order to legally collect the tax." From these premises, the taxpayers then conclude that federal and state individual income taxes are based solely on "voluntary compliance," rather than mandatory filing and payment requirements.

Courts have examined and uniformly rejected the argument that the obligation to file returns and pay income tax is completely voluntary. While both the federal and Idaho tax laws are based on honest and forthright self-reporting, this does not support the argument that these laws are optional.

F.2d 1007, 1008 (9th Cir. 1988); *United States v. Witvoet*, 767 F.2d 338, 339 (7th Cir. 1985).

The Idaho income tax return filing requirements are set out in Idaho Code § 63-3030. Idaho Code § 63-3030(a)(1) sets forth the filing requirements for individuals who are residents of this state. Residents with a gross income in excess of the threshold amount determined under federal tax law are required to file an Idaho individual income tax return.

The specific Idaho Code section that imposes the Idaho individual income tax is Idaho Code § 63-3024. Individuals required to file an Idaho income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. The record before the Tax Commission reveals that the taxpayers were residents of Idaho during the years in question and received income during those same years. Under Idaho's tax laws, the taxpayers were required to file Idaho individual income tax returns and to pay the Idaho income tax shown due on those returns.

From a reading of the materials submitted by the taxpayers, it appears that they also intended to present a second argument to the Commission. Although the taxpayers did not present this argument at the informal conference, the materials they submitted seem to infer that the taxpayers believe they are natural born citizens rather than residents of the state of Idaho (they are United States citizens but without a "tax home"). Subsequently the taxpayers believe they do not have Idaho taxable income because their income does not derive from an identified "source" as that term is used in the foreign income provisions of the Internal Revenue Code (IRC § 865).

Courts have uniformly held that the characterization of a person's status as a natural born citizen or "sovereign" does not change his or her residency status for income tax purposes. *United States v. Hanson*, 2 F.3d 942, 945 (9th Cir. 1993); *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990); *United States v. Dawes*, 874 F.2d 746, 750-751 (10th Cir. 1989); *United States v. Studley*, 783 F.2d 934, 937 & n.3 (9th Cir. 1986); *Minovich v. Commissioner of Internal Revenue*, 1994 T.C. Memo. 89. Domicile itself affords a basis for a state's individual income tax. *New York, ex*
DECISION - 3
[Redacted][Redacted]

rel Cohn v. Graves, 300 U.S. 308, 312-13 (1937) ("That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protections of its laws are inseparable from responsibility for sharing the costs of government."); *Shaffer v. Carter*, 252 U.S. 37, 52 (1920) ("[J]ust as a State may impose general income taxes upon its 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 non-residents from their property or business within the State, or their occupations carried on therein.")

Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his taxable income. Resident is defined in Idaho Code § 63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who is domiciled in this state. The taxpayers do not dispute that they were domiciled in Idaho during the years in question and continue to be domiciled in Idaho.

The Idaho Legislature has clearly set forth that the Idaho income tax applies to residents of this state; the Legislature has defined the term resident; and the taxpayers presented no evidence to show that they are not residents as the term "resident" is defined. The recharacterization of one's domicile in Idaho does not alter the clear legislative definition of residency in Idaho's statutes or Idaho's inherent ability to tax the income of its residents. Neither does the recharacterization of their Idaho residency make the taxpayers nonresident aliens or otherwise make the federal income sourcing rules for nonresident aliens or foreign corporations applicable to them.

The taxpayers have not presented any information to dispute the factual basis of the deficiency determinations. 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 taxpayers to show that the tax deficiency is

erroneous. Id. Aside from the taxpayers' legal conclusions discussed above, the taxpayers have not contested the amount of tax, penalty or interest determined to be deficient.

WHEREFORE, the Notices of Deficiency Determination dated July 7, 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:

[Redacted]:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1992	\$457	\$114	\$309	\$880

[Redacted]:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$ 872	\$218	\$429	\$1,519
1995	305	76	121	502
1996	2,914	729	936	<u>4,579</u>
			TOTAL	<u>\$6,660</u>

[Redacted]:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$ 922	\$ 231	\$ 454	\$ 1,607
1995	1,261	315	509	2,085
1996	6,829	1,707	2,194	10,730
1997	358	90	84	<u>532</u>
			TOTAL	<u>\$14,954</u>

Interest for each of the above deficiencies is calculated through May 4, 2001.

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

An explanation of the taxpayers' 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 foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED] Receipt No. [Redacted]
[Redacted]

ADMINISTRATIVE ASSISTANT 1