

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 15163
[Redacted],	)	
	)	DECISION
Petitioners.	)	
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On July 13, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioners), asserting income tax, penalty and interest in the amount of \$4,411 for the 1998 tax year.

On August 31, 2000, the petitioners filed an appeal and petition for redetermination. The petitioners requested that the Commission schedule an informal conference. The Tax Commission scheduled the conference as requested for June 15, 2001, but the petitioners did not appear. Therefore, the Commission's decision is based on the information contained in its file. The Tax Commission, having reviewed the file, including the information the petitioners' and their representative submitted, hereby issues its decision.

This is a nonfiler case. The petitioners failed to file returns and pay tax regarding their federal and Idaho individual income tax obligations for the 1998 tax year. The petitioners resided in Mountain Home, Idaho during the tax year. Mr. [Redacted] is employed by [Redacted]. He also receives military retirement compensation.

[Redacted][Redacted] reported, on a standard W-2 form, that it paid approximately \$44,000 of wages to Mr. [Redacted] during the 1998 tax year. The federal government reported, on form 1099-R, that it paid approximately \$15,000 of retirement income to Mr. [Redacted] during the 1998 tax year.

Based on this information, the Tax Commission's Enforcement Specialist concluded the

petitioners had an Idaho income tax filing requirement. The Enforcement Specialists contacted the petitioners and asked for additional information. When contacted about their apparent Idaho income tax filing requirement, the petitioners' representative responded by submitting standard tax protester arguments regarding the petitioners' requirement to file federal and state income tax returns.

The Commission's Enforcement Specialist prepared a provisional return for the petitioners, using the income amount reported on the W-2 and 1099-R. The Enforcement Specialist provided petitioners with a standard deduction and personal exemptions in preparing the provisional return. The provisional return showed a deficiency of \$4,411 (tax, penalty and interest) and the Enforcement Specialist issued a Notice of Deficiency Determination.

The petitioners' representative responded by submitting a Petition for Redetermination that repeated the standard tax protester arguments he asserted when contacted initially by the Enforcement Specialist. The Petitioners' representative asserted the petitioners were not required to report the income shown on their W-2 and 1099-R reports or pay federal and Idaho income tax because: (1) they were sovereign citizens rather than Idaho residents and, therefore, are not subject to the tax laws of Idaho; (2) federal and state taxes are based solely on "voluntary compliance"; (3) wages are not "income" subject to tax; and (4) the Tax Commission did not have the authority to calculate their tax due and issue a Notice of Deficiency Determination.

The Tax Commission finds the petitioners' legal arguments are erroneous as a matter of law. The courts have addressed and rejected these common tax protestor arguments. Idaho law clearly sets forth the petitioners' obligation to file tax returns and pay the amount of tax correctly due on that return. The Commission is authorized to issue a Notice of Deficiency Determination when an individual fails to satisfy his or her tax obligations.

The courts have consistently rejected an individual's claim of "sovereignty" in an attempt to

avoid federal or state income tax. 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. People of State of New York, ex 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."

The petitioners' belief that their obligation to report income and pay income tax is voluntary is erroneous. While both the federal and Idaho tax laws are based on honest and forthright reporting and self-assessment, this does not support the argument that these laws are optional. Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988); United States v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985). The courts also have rejected the petitioners' claim that wages are not income subject to tax. Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986); United States v. Lawson, 670 F.2d 923 (10th Cir. 1982); United States v. Buras, 633 F.2d 1356 (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).

Idaho law specifically provides the Commission with the authority to determine the amount of tax a person properly owes and issue a notice when the person has failed to remit the proper amount of tax.

**63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.** (1) (a) If, in the case of any taxpayer, the state tax commission

determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery, . . .

As stated above, the Enforcement Specialist found the wage and income information reported by [Redacted] and the federal government indicated the petitioners were required to file and report taxable income for the 1998 tax year.

The Enforcement Specialist correctly determined that the petitioners' income was subject to Idaho individual income tax. The record before the Tax Commission demonstrates the petitioners were domiciled in Idaho and therefore Idaho residents during the year in question. Idaho Code § 63-3013 states that any individual who is domiciled in the state of Idaho is a resident. The petitioners owned real property in Idaho, titled motor vehicles in Idaho, were registered to drive in Idaho, and were otherwise domiciled in Idaho during the 1998 tax year. They were Idaho residents. Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his or her taxable income.

The Idaho income tax return filing requirements are set out in Idaho Code § 63-3030. Any resident who, during the taxable year, has a gross income in excess of the stated threshold amount must file a return. For example in 1996, a married person with an annual gross income in excess of \$6,500 was required to file federal and Idaho returns. The wage and income information in this case shows the petitioners received approximately \$59,000 of gross income, an amount well in excess of the statutory filing amount.

Based on the available information, the Tax Commission finds the provisional returns to be a fair representation of the petitioners' taxable income for the tax year in question. 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 Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioners to show that the tax deficiency is erroneous. Id. Since the petitioners have failed to meet this burden, the Tax Commission has no choice but to find that the amount shown due on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated July 13, 2000, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$3,245	\$811	\$614	\$4,670

Interest is calculated through October 1, 2001, and will continue to accrue at the rate of \$0.71 per day until paid.

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

An explanation of the petitioners' 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]

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ADMINISTRATIVE ASSISTANT 1