

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15284
[Redacted],)	
)	DECISION
Petitioners.)	
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On November 1, 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 \$2,831 for the 1999 tax year.

On December 23, 2000, the petitioners filed a timely appeal and petition for redetermination. The petitioners requested an informal conference and the Commission conducted the conference on May 8, 2001. The Tax Commission, having reviewed the file and the information the petitioners submitted at the informal conference, hereby issues its decision.

The petitioners filed “zero returns” regarding both their federal and Idaho individual income taxes for the 1999 tax year. The petitioners resided in [Redacted], Idaho during the tax year. Mr. [Redacted] works for [Redacted] as an avionics technician. The income he received from [Redacted] was the couple’s only income for the taxable year.

[Redacted] reported, on a standard W-2 form, that it paid wages to Mr. [Redacted] in excess of \$53,000 for the 1999 tax year. The petitioners attached the W-2 to the zero return they filed with the Tax Commission, together with a hand-written note explaining they believed the W-2 income was not “income” for federal or state income tax purposes.

The Commission’s staff prepared a provisional return for the petitioners, using the income amount reported on the W-2, rather than the zero amount of income reported by the petitioners. The staff also provided petitioners with a standard deduction and personal exemptions in preparing the

provisional return. The staff calculated a deficiency of \$2,831 (tax, penalty and interest) and issued a Notice of Deficiency Determination.

The petitioners responded by submitting standard tax protester arguments stating they were not required to report or pay tax on the income they received from [Redacted]. The petitioners asserted they are not required to report the W-2 income or pay federal and Idaho income tax because: (1) federal and state taxes are based solely on “voluntary compliance,” (2) wages are not “income” subject to tax, (3) the Tax Commission did not have the authority to adjust the income reported on their return and issue a Notice of Deficiency Determination, and (4) the Idaho legislature improperly delegated its legislative authority to the federal government when the legislature incorporated by reference provisions of federal tax law in Idaho’s state tax code.

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 adjust a return that is found to be deficient and to issue a Notice of Deficiency Determination.

63-3040. EXAMINATION OF RETURN AND DETERMINATION OF TAX. As soon as practicable after the return is filed, the state tax

commission shall examine it and shall determine the correct amount of the 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 Commission's staff found that W-2 wage and income information reported by [Redacted] indicated the petitioners were required to file and report taxable income for the 1999 tax year.

Because petitioners were domiciled in Idaho and were Idaho residents, the Commission's staff correctly determined that the petitioners' income was subject to Idaho individual income tax. Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his taxable income. 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 1999.

At the informal conference, the petitioners further asserted that, despite their residency status, they were not required to pay tax because the employer, [Redacted], is located in Washington and is not subject to Idaho withholding tax. The petitioners state that because [Redacted] did not withhold state tax from the wages it paid, the petitioners are not required to pay Idaho individual income tax. In making this argument, the petitioners confuse Idaho individual income tax with the Idaho withholding tax.

The two taxes are separate, albeit related. The individual income tax is imposed on the petitioners. The withholding tax is a tax imposed on employers. At the end of the year, the withholding tax is credited against the individual employee's (i.e. the petitioners') individual income

tax liability. Idaho Code § 63-3035. However, the failure of an employer to withhold the tax does not relieve an employee from his or her responsibility to correctly report and pay individual income tax. Instead, the lack of withholding by the employer means the petitioners do not have a credit for withholding taxes to apply against their individual income tax liability.

Idaho Code § 63-3030 states the income requirements for filing Idaho income tax returns. Every resident with income in excess of the statutory threshold amount must file a return. The W-2 information in this case shows the petitioners received at least \$53,000 of gross income, an amount well in excess of the threshold filing amount.

For convenience to taxpayers and state tax administrators alike, the legislature measured an individual's gross income in the same manner as the federal tax code. Petitioners object to the Idaho legislature incorporating federal tax provisions in state statute by reference to the federal tax code, as done in the above-quoted statute. Petitioners assert that in so doing the Idaho Legislature unlawfully delegated its legislative authority of making state laws to the federal government.

Under the Idaho constitution, all state legislative power is vested in the Idaho Legislature. The Idaho Supreme Court has held that while the Legislature cannot grant authority to the federal government to promulgate laws for it, the Legislature does not delegate its authority when it simply adopts a law or rule of Congress already in existence or operation. Idaho Savings & Loan Ass'n v. Roden, 82 Idaho 128, 350 P.2d 225 (1960). In the instances cited by petitioners, the Idaho Legislature did not delegate its authority to the federal government. The Idaho Legislature simply adopted federal tax laws that already existed or were in operation.

In summary, the legal interpretations asserted by the petitioners are not supported by statute or case law. The record before the Tax Commission reveals that the petitioners were residents of Idaho in 1999 and received in excess of \$53,000 in wages during the year. Under Idaho's tax laws,

the petitioners were required to report and pay Idaho individual income tax on that income.

Based on this information, the Tax Commission finds the provisional returns to be a fair representation of the petitioners' taxable income for the years 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 November 1, 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>
1999	\$2,162	\$541	\$240	\$2,943

Interest is calculated through October 1, 2001, and will continue to accrue at the rate of \$0.47 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]
[Redacted]

Receipt No. [Redacted]

ADMINISTRATIVE ASSISTANT 1