

petitioners received income ranging from approximately \$36,000 to \$82,000 during each of the tax years. The income appears to include receipts from the petitioners' various businesses, and some interest income.

Based on this information, the Tax Commission's Enforcement Specialist concluded the petitioners had an Idaho income tax filing requirement. The Enforcement Specialist contacted the petitioners and asked for additional information concerning the tax years in question.

When contacted about their apparent Idaho income tax filing requirements, the petitioners responded by submitting a written petition stating they were not required to file Idaho individual income tax returns because they were not required to file federal income tax returns.

The Commission's staff prepared provisional returns for the petitioners, using the income amount reported on the various reporting forms. The staff also provided the petitioners with standard deductions and personal exemptions in preparing the provisional return. The staff calculated a deficiency of \$38,300 (tax, penalty and interest) and issued a Notice of Deficiency Determination.

The petitioners responded by submitting a written protest in which they again asserted they were not required to file Idaho individual income tax returns because they were not required to file federal income tax returns. The petitioners did not state why they believed they were exempt from the federal income tax filing requirement. However, the petitioners noted they had not filed federal returns, and, as of the date of their protest, the Internal Revenue Service had not asked them to file returns.

The petitioners also submitted a memorandum in advance of the informal conference. The memorandum set forth the petitioners' interpretation of the federal tax code (the Internal Revenue Code) and several legal arguments asserted in support of the petitioners' position. The arguments

submitted by the petitioners primarily are standard tax protestor arguments. The petitioners apparently believe they are not required to file or pay federal and Idaho income tax because: (1) federal and state taxes are based on voluntary compliance, (2) the Idaho income tax is an unconstitutional excise tax, and (3) the petitioners are sovereign American citizens and therefore their income is subject to the federal sourcing rules set forth in IRC § 861. The petitioners also challenge the actions taken by the Commission's staff and state: (1) the Tax Commission did not have the authority to issue a Notice of Deficiency Determination and (2) the Tax Commission obtained wage and income information about petitioners in violation of the IRC § 6103(d)(1).

The Tax Commission finds the tax protestor arguments are erroneous as a matter of law. As discussed below both the Idaho and federal courts have addressed and rejected the petitioners' standard tax protestor arguments. Additionally, the Commission's staff complied with the relevant law in obtaining income information about the petitioners and issuing a Notice of Deficiency Determination to the petitioners.

The petitioners stated the Internal Revenue Service did not send them a legal notice informing petitioners that they are required to file federal returns. It appears the petitioners believe this lack of affirmative action by the Internal Revenue Service relieves them of their statutory obligation to file federal returns. From these premises, the petitioners appear to believe that federal and state individual income taxes are based on voluntary compliance rather than mandatory filing and payment requirements.

The petitioners' belief is misplaced. While both the federal and Idaho tax laws are based on honest and forthright reporting and self-assessment, this does not mean 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 consistently have addressed and rejected the petitioners' argument that the individual income tax is an unconstitutional excise tax. In Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916), the United States Supreme Court ruled the federal income tax of 1913 was constitutionally valid even though it imposed an unapportioned direct tax. The Court held the ratification of the Sixteenth Amendment removed the constitutional barrier against unapportioned direct taxes. Similarly, in the case of Diefendorf v. Gallet, 51 Idaho 619 (1932), the Idaho Supreme Court found the Idaho income tax, which is an excise tax and not a property tax, is constitutional.

The materials the petitioners submitted infer that the petitioners are natural born citizens rather than residents of the state of Idaho (they are United States citizens but without a "tax home"). Based on this premise, the petitioners assert 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 §§ 861 and 865).

The 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. 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."

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 were domiciled 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.

Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency.

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 wage and income information reported on forms W-2, 1098 and 1099, indicated the petitioners were required to file and report taxable income for the 1999 tax year. Because the 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.

At the informal conference, the petitioners also asserted the Commission's staff had gathered wage and income information from the Internal Revenue Service in violation of section 6103(d)(1) of the Internal Revenue Code, which provides in pertinent part:

§ 6103. Confidentiality and disclosure of returns and return information.

(d) Disclosure to State tax officials and State and local enforcement agencies.—

(1) In general. — Returns and return information with respect to taxes . . . shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws. . . . Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, . . .

The petitioners alleged the Commission did not make a request in writing to the Internal Revenue Service. Based on this, the petitioners conclude that any information received from the Service is tainted and cannot be used to calculate the petitioners' income tax liability.

The flaws in the petitioners' legal argument aside, the petitioners erred as a matter of fact. The Petitioners have been provided with a copy of the written exchange agreement between the Commission and the Internal Revenue Service. An Idaho State Tax Commissioner, the head of the Idaho State Tax Commission, signed the agreement. Specifically, the agreement provides:

3.2 The agreement constitutes the requisite authorization pursuant to section 6103(d)(1) of the Code for the IRS to disclose to, and permit inspection by, an Agency Representative of Federal returns and Federal return information.

. . .

Exchange Agreement, section 3.2 at p.5. [Redacted].

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 during the tax years in question and received income in excess of the amount statutorily exempted from Idaho's filing requirements. 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 finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated November 8, 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>
1993	\$4,524	\$1,131	\$2,716	\$ 8,371
1994	1,566	392	820	2,778
1995	5,214	1,304	2,278	8,796
1996	4,092	1,023	1,448	6,563
1997	4,553	1,138	1,215	6,906
1998	4,339	1,085	824	<u>6,248</u>
				<u>\$39,662</u>

Interest is calculated through October 1, 2001, and will continue to accrue at the rate of \$5.31 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] [REDACTED]

ADMINISTRATIVE ASSISTANT 1