

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15327
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On November 2, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner), asserting income tax, penalty and interest in the amount of \$46,923 for the taxable years 1994 through 1998.

On November 30, 2000, the petitioner filed a protest. The petitioner elected not to participate in an informal conference. Therefore, this decision is based on the information currently contained in the Commission's file. The Commission has reviewed the file, is advised of its contents, and now issues its decision.

This is a nonfiler case. The petitioner did not file an Idaho income tax return for the taxable years 1994 through 1998. The petitioner lives in [Redacted], Idaho. He is married, but his wife is not listed on the Commission's Notice of Deficiency Determination.

The petitioner is employed by [Redacted] as a pilot. [Redacted] reported wage and income information it paid to the petitioner on form W-2. As reported by the airlines, the Petitioner annually received wages and income in an amount ranging from approximately \$55,000 to \$112,000 during each of the tax years in question.

Based on this information, the Tax Commission's Enforcement Specialist concluded the petitioner had an Idaho income tax filing requirement. The Enforcement Specialist contacted the petitioner and asked for additional information. When contacted about his apparent Idaho income tax filing requirement, the petitioner responded by submitting standard tax protester arguments

regarding his requirement to file federal and state income tax returns.

The Enforcement Specialist then prepared provisional returns for the petitioner using the available W-2 wage and income information. The Enforcement Specialist provided the petitioner with standard deductions and personal exemptions in preparing the provisional returns. The provisional returns showed a total deficiency of \$8,700 (tax, penalty and interest) and the Enforcement Specialist issued a Notice of Deficiency Determination in that amount.

The petitioner apparently believes he is not required to file or pay federal and Idaho income tax because: (1) he is a sovereign citizen rather than an Idaho resident, and, therefore, is not subject to the tax laws of Idaho; (2) his wages are not “income” subject to tax; (3) federal and state taxes are based solely on “voluntary compliance”; (4) the Idaho income tax is an unconstitutional excise tax; and (5) the Tax Commission did not have the authority to issue a Notice of Deficiency Determination.

The Tax Commission finds the petitioner’s legal arguments are erroneous as a matter of law. The courts have addressed and rejected these common tax protestor arguments. Additionally, Idaho law clearly sets forth the petitioner’s 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 obligation.

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 record before the Tax Commission demonstrates the petitioner was an Idaho resident during the years in question. The term "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 petitioner does not dispute that he lived in [Redacted], Idaho, during the tax years in question. He and his wife possessed Idaho driver's licenses, owned property in Idaho, and filed for and received a homeowner's exemption regarding real property the petitioner owned in [Redacted], Idaho. The petitioner was domiciled during the years in question, and continues to be domiciled, in Idaho. He is a resident of Idaho.

The courts have consistently held that wages are income for income tax purposes. 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).

The courts have addressed 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. 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 addressed and rejected the tax protestor 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. 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 Tax Commission also notes the petitioner raised these same issues in a previous protest he filed. In a previous decision, the Commission rejected the petitioner's argument and found he was obligated to file Idaho individual income tax returns and pay Idaho individual income tax. The petitioner did not appeal the Commission's decision.

The Idaho income tax 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. The petitioner's annual income exceeded the threshold amount determined by law. For example in 1996, a single person with an annual gross income in excess of \$6,500 was required to file federal and Idaho returns.

Persons who are required to file an Idaho individual income tax return also must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. Therefore, under Idaho laws, the petitioner was required to file an Idaho individual income tax return and to pay the Idaho income tax correctly due on that return.

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 hereof, 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] on form W-2 indicated the petitioner was required to file and report taxable income. Because petitioner was domiciled in Idaho and was an Idaho resident, the Enforcement Specialist correctly determined the petitioner's income was subject to Idaho individual income tax and issued a Notice of Deficiency Determination.

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 petitioner to show that the tax deficiency is erroneous. Id. Since the petitioner has failed to meet the burden in this case, 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 2, 2000, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$2,837	\$ 709	\$1,487	\$ 5,033
1995	6,395	1,599	2,797	10,791
1996	7,199	1,800	2,550	11,549
1997	6,349	1,587	1,695	9,631
1998	8,179	2,045	1,553	<u>11,777</u>
				<u>\$48,781</u>

Interest is calculated through October 1, 2001, and will continue to accrue at the rate of \$6.77 per day until paid.

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

An explanation of the petitioner's 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]

[Redacted]
[Redacted]

ADMINISTRATIVE ASSISTANT 1