

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 15334
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
	)	
	)	
	)	

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On December 13, 2000, the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), denying a claimed refund of \$3,100 for the taxable year 1998 and asserting income tax, penalty and interest in the amount of \$5,495 for the taxable year 1999.

On January 8, 2001, the Idaho State Tax Commission received an undated letter from the taxpayers, which the Commission treated as a timely filed appeal and petition for redetermination. The taxpayers elected not to participate in an informal conference or submit additional information for the Commission’s consideration.

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. For the reasons set forth below, the Commission affirms the deficiency determination with interest updated through June 30, 2001.

The taxpayers filed an Idaho individual income tax return for taxable year 1998 showing federal adjusted gross income of \$83,188. The taxpayers paid Idaho individual income tax in the amount of \$3,100 regarding the reported income. Later the taxpayers filed an amended return, showing \$ -0- federal adjusted gross income and \$ -0- taxable income. Based on the “zero” amended return, the taxpayers sought a refund of the entire \$3,100 they previously paid. For taxable year 1999, the taxpayers filed an original return showing \$ -0- federal adjusted gross income, \$ -0- taxable income and no taxes due or owing.

Idaho Code § 63-3030 provides that every resident individual having gross income, as defined by Section 61(a) of the Internal Revenue Code, exceeding a specified dollar amount is required to file an Idaho individual income tax return. Individuals having a gross income of \$3,300 or more (\$5,400 or more if filing a joint return) for the 1999 taxable year were required to file Idaho individual income tax returns.

The Income Tax Audit Bureau determined the taxpayers were Idaho residents for taxable years 1998 and 1999 and that the taxpayers had a filing requirement for the taxable years 1998 and 1999. The taxpayers were shareholders in an Idaho subchapter S corporation. Based on information received from the corporation, staff determined the taxpayers received more than \$20,000 as their share of the corporation's income. The taxpayers also received in excess of \$20,000 of wages from the corporation in the form of officers' compensation. Additionally, the staff determined from other sources that the taxpayers received more than \$30,000 of income from an insurance agency and rental activities. The Income Tax Audit Bureau therefore denied the requested refund for the taxable year 1998, prepared a provisional return for the taxable year 1999, and issued a Notice of Deficiency Determination to the taxpayers.

The taxpayers responded to the Notice of Deficiency Determination with a written statement. The taxpayers contest the constitutionality of the Idaho individual income tax as applied to them stating the income tax "represents an unapportioned direct tax on wages." In support of their position, the taxpayers stated they received a refund of federal taxes and indicated the refund was based on their filing a "zero" return with the Internal Revenue Service. The taxpayers did not provide any factual information regarding their residency status, filing status, income or deductions.

From an analysis of the pertinent law, a refund is not appropriate on the grounds asserted by the taxpayers. Although it appears the Internal Revenue Service issued the taxpayers a refund of the overpayment of certain "estimated" taxes for the taxable year 1998, the taxpayers failed to provide

any documentation regarding the reason the Internal Revenue Service issued a refund. Additionally, the “zero” return taxpayers filed for taxable year 1998 is not legally supportable.

The taxpayers appear to assert two arguments that are common tax protestor arguments: (1) the wages they received were not “income” subject to tax; and (2) the Idaho income tax is an unconstitutional direct tax. Idaho and federal courts repeatedly have examined and rejected these arguments. The courts held that a taxpayer’s claim that wages are not income subject to tax is totally devoid of merit. Coleman v. Commissioner, 791 F.2d 68, 70 (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, Dept. of Revenue and Taxation, 110 Idaho 572, 575 (Ct. App. 1986). Likewise, the Idaho and federal courts specifically rejected a taxpayer’s argument that the Idaho income tax is unconstitutional on the alleged grounds that it is an unapportioned direct tax. Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916)(The federal income tax of 1913 was constitutionally valid even though it imposed an unapportioned direct tax. Ratification of the Sixteenth Amendment removed the constitutional barrier against unapportioned direct taxes). *See also* Diefendorf v. Gallet, 51 Idaho 619 (1932)(The Idaho income tax, which is an excise tax and not a property tax, is constitutional).

Therefore, the arguments made by the taxpayers have not convinced the Tax Commission that the taxpayers are immune from their legal obligation to pay their taxes. The record before the Tax Commission reveals that the taxpayers were residents of Idaho in 1998 and 1999 and that they earned more than \$80,000 in each of those years. Under Idaho’s tax laws, they were required to file Idaho individual income tax returns reflecting their wages as income and to pay Idaho income tax as set forth in Idaho Code § 63-3024. 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, Dept. of Revenue and Taxation, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Id. Since the courts have consistently rejected the taxpayers' legal arguments, the taxpayers have failed to meet their burden in the present case. Therefore, the Tax Commission must find that the amount shown due on the Notice of Deficiency Determination is true and correct.

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

IT IS ORDERED and THIS DOES ORDER that the refund claimed by the taxpayers for the taxable year 1998 is DENIED and that the taxpayers pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$4,172	\$1,043	\$402	\$5,617

Interest is calculated through June 30, 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

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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]

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ADMINISTRATIVE ASSISTANT 1