

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15393
[REDACTED],)	
)	DECISION
Petitioner.)	
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)	

On December 12, 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 \$4,523 for the tax years 1995 through 1998.

On February 8, 2001, the Petitioner filed an appeal and petition for redetermination. 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 tax years 1995 through 1998. Based on information obtained by the Tax Commission's Enforcement Specialist, it appeared that the petitioner, who lives in [Redacted], Idaho, had an Idaho income tax filing requirement for the taxable years in question. The wage and income information reported on W-2 forms and 1099-Misc. forms showed the petitioner received income in an amount ranging between approximately \$15,000 and \$24,000 during each of the tax years.

When contacted by the Enforcement Specialist about her apparent Idaho income tax filing requirement, the petitioner responded by submitting standard tax protester arguments regarding her requirement to file federal and state income tax returns. The Commission's staff prepared a provisional return for the petitioner, using the income amount reported on the W-2 and 1099 Misc forms.

The staff also provided the petitioner with amounts for the standard deduction and personal exemptions in preparing the provisional return. The staff calculated a total deficiency of \$4,523 (tax, penalty and interest) and issued a Notice of Deficiency Determination.

The petitioner apparently believes that she is not required to file or pay federal and Idaho income tax because: (1) she is a “sovereign American state citizen and therefore, is not subject to the tax laws of the United States, (2) federal and state taxes are based solely on “voluntary compliance,” (3) her wages are not “income” subject to tax, and (4) the Idaho income tax is an unconstitutional excise tax.

The Tax Commission is not persuaded. None of the arguments made by the petitioner have convinced the Tax Commission that she is somehow immune from her legal obligation to file an Idaho income tax return and to pay her taxes.

The courts uniformly have 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 petitioner’s belief that her obligation to file and pay income tax is completely voluntary is also erroneous. 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 consistently rejected the argument that wages are not income. 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. Burus, 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).

Likewise, the taxpayer's argument that the Idaho income tax is an unconstitutional excise tax is an argument the courts have addressed and rejected. 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 record before the Tax Commission reveals the petitioner was an Idaho resident during the years in question. 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. The petitioner's annual income exceeded the threshold amount determined by law (for example in 1996, single persons with an annual gross income in excess of \$6,500 were 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. Under Idaho's tax laws, the petitioner was required to file an Idaho

individual income tax return and to pay the Idaho income tax due on that return.

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 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 December 12, 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>
1995	\$ 654	\$164	\$285	\$1,103
1996	763	191	270	1,224
1997	1,123	281	300	1,704
1998	467	117	51	<u>635</u>
			TOTAL DUE	<u>\$4,666</u>

Interest is calculated through October 1, 2001, and will continue to accrue at the rate of \$0.66 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] Receipt No. [Redacted]
[REDACTED]

ADMINISTRATIVE ASSISTANT 1