



petitioners' Legal Notices. The specialist provided the petitioners with standard deductions and personal exemptions in preparing the provisional returns. The provisional returns showed a total deficiency of \$59,756 (tax, penalty, and interest) and the specialist issued a Notice of Deficiency Determination in that amount.

According to the Legal Notices filed by the petitioners and their representative, the petitioners apparently believe their income is exempt from federal and state individual income tax because: (1) the petitioners' wages are not "income" subject to tax; (2) federal and state taxes are based solely on "voluntary compliance"; and (3) the Tax Commission did not have the authority to issue a Notice of Deficiency Determination.

The record before the Tax Commission demonstrates the petitioners were Idaho residents 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 petitioners do not dispute they were residents of Idaho during the tax years in question. Rather than challenging the state's jurisdiction to tax income earned outside the state of Idaho, the petitioners contend their wages are not income. However, 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 petitioners also asserted they "elected" not to file a return under the provisions of 26 U.S.C. § 63(e). The petitioners' reliance on this section of the Internal Revenue Code is misplaced. Section 63(e) of the Internal Revenue Code allows taxpayers to make the election between claiming a standard deduction and itemizing their deductions when determining their

taxable income for federal income tax purposes. The code section does provide taxpayers with the option of voluntarily complying with the requirements of filing tax returns and paying income tax.

The courts 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 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 petitioners' annual income exceeded the threshold amount determined by law.

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 petitioners were required to file Idaho individual income tax returns and pay the Idaho income tax shown as due on those returns.

In the event a person fails to file a tax return or to pay the proper amount of individual income tax, 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 Enforcement Specialist found a deficiency existed based on the income reported by the petitioners. Because the petitioners were domiciled in Idaho and were Idaho

residents, the Enforcement Specialist correctly determined the petitioners' wages and other income were subject to Idaho individual income tax and issued a Notice of Deficiency Determination.

The Commission also notes that prior to filing a protest of the Commission's Notice of Deficiency Determination, the petitioners retained a new representative. The new representative protested the Notice of Deficiency Determination on the additional ground that the Determination was based on an Internal Revenue Service audit that had been overturned by the United States Tax Court. However, as explained above, the Notice of Deficiency Determination was based upon the income reported to the Commission by petitioners in their Legal Notices.

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 petitioners failed to meet the burden regarding the deficiency for the tax year 1998, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination for the tax year 1998 is true and correct.

WHEREFORE, the portion of the Notice of Deficiency Determination dated February 7, 2001, asserting income tax, penalty and interest in the amount of \$59,756 for the tax years 1994 through 1996, 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>
1994	\$ 9,553	\$ 2,388	\$ 5,197	\$17,138
1995	\$ 9,974	\$ 2,494	\$ 4,559	\$17,027
1996	\$16,992	\$ 4,248	\$ 6,355	<u>\$27,595</u>
TOTAL				<u>\$61,760</u>

Interest is calculated through December 31, 2001, and thereafter will continue to accrue at the rate of \$7.00 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

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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