

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 15486
[Redacted],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On February 26, 2001, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1995, 1997 and 1998 in the total amount of \$6,297.

On March 11, 2001, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to submit additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

[Redacted]. The Bureau researched the Tax Commission's records and found the taxpayers had not filed Idaho income tax returns for the taxable years 1995, 1997 and 1998. The Bureau sent the taxpayers a letter asking about their Idaho filing requirement to which the taxpayers responded they were not required to file.

Based upon the information it had, the Bureau was not satisfied with the taxpayers' response. Therefore, the Bureau sent the taxpayers a domicile questionnaire. The taxpayers did not return the questionnaire. The Bureau obtained additional information from the county the taxpayers lived in [Redacted]. From that information, the Bureau determined the taxpayers did indeed have an Idaho filing requirement and prepared income tax returns for the taxpayers. The

Bureau sent the taxpayers a Notice of Deficiency Determination, which the taxpayers refused, stating their refusal was without dishonor, for good legal cause, FRAUD.

The Tax Commission sent the taxpayers a letter setting forth two alternative methods for having the Notice of Deficiency Determination redetermined. The taxpayers chose to submit additional documents in support of their position.

The documents the taxpayers submitted presented arguments that are standard tax protestor arguments. Among the many arguments the taxpayers presented were that they had no income as defined by the courts; they are not citizens subject to the jurisdiction of the United States; they were not involved in a "revenue taxable activity"; the 16th Amendment did not repeal apportionment; the income tax is an excise tax which is essentially a privilege tax and they do not exercise any taxable privileges; the income tax system is voluntary and they choose not to volunteer; the State did not follow Commercial Law; and the Tax Commission has no jurisdiction over them.

The taxpayers stated they had no earned income which could create a basis for a tax liability. The taxpayers then cited numerous court cases, law dictionary definitions, and an excerpt from the Congressional Record of 1913. All these citations talk about income or say what income is; however, the taxpayers never explained why they believed they did not have income. The taxpayers appear to believe that income has something to do with corporate profits. However, that is not what the U.S. Supreme Court said in the cases cited by the taxpayers. The Court stated that the Corporation Excise Tax Act of August 5, 1909, defined the word income. The Court stated it was obvious that the decisions written in developing the definition of the word "income" as used in the Corporation Excise Tax Act of 1909 has the same meaning and content in the Income Tax Acts of 1913, 1916 and 1917. This does not mean that income is only

corporate profit. It means income is what the Court stated in Eisner v. Macomber, 252 U.S. 189 (1920), the gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. See Merchant's Loan and Trust Company v. Smientanka, 255 U.S. 509, 509-510 (1921).

Therefore, income is not just corporate profit. Income includes, but is not limited to, all the items listed in Internal Revenue Code (IRC) section 61. The Tax Commission has information showing the taxpayers received wages in each of the years. Wages are included in IRC section 61 under compensation for services, fees, commissions, etc. In United States v. Koliboski, 732 F.2d 1328, 1330 n.1 (7th Cir. 1984), the court stated,

Although not raised in his brief on appeal, the defendant's entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us are already aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages--or salaries--are not taxable. (Emphasis in original.)

The taxpayers claimed that they are not citizens subject to the jurisdiction of the United States. The taxpayers stated they were born in one of the several states of the United States of America. They were not born in a territory over which the United States was sovereign and therefore are not subject to its jurisdiction. The taxpayers also claimed the state of Idaho is without the power or authority to impose a tax on them because, according to the taxpayers, neither they nor their property are within the territorial limits over which the State has jurisdiction or its sovereignty extends. The taxpayers stated no law has conferred any power to the State over them or their property.

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. Idaho's jurisdiction to tax is not dependant upon whether an individual is a citizen of the United States. Idaho's jurisdiction to tax is found in Idaho Code section 63-3002, which states in pertinent part,

It is the intent of the legislature by the adoption of this act, . . . to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state . . . .

The taxpayer's convoluted logic notwithstanding; domicile itself affords a basis for a state's individual income tax. See 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 section 63-3024 imposes an income tax on every resident individual measured by his taxable income. Resident is defined in Idaho Code section 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 stated that they were domiciled in Athol, Idaho since 1996 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 have presented no evidence to show that they were 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.

Therefore, since the taxpayers resided within the borders of the state of Idaho, the taxpayers do come under the jurisdiction of the state of Idaho and, therefore, the jurisdiction of the Tax Commission.

The taxpayers stated they were not involved in "revenue taxable activities." However, Mr. [Redacted] was employed during the years 1995, 1997 and 1998, and received wages from his employer. This activity typically yields an income or some sort of compensation (wages) to the individual. That income or compensation is included in the definition of gross income found in section 61 of the Internal Revenue Code. Since gross income is the starting point in determining taxable income and compensation is considered a part of gross income, one would presume the compensation Mr. [Redacted] received was a "revenue taxable activity."

The taxpayers argued that compensation for labor and the exercise of the right to labor are personal property and any tax on them is a direct tax subject to apportionment. However, Idaho and federal courts specifically rejected similar arguments that the income tax is unconstitutional on the alleged grounds that it is an unapportioned direct tax. In Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916), the court stated the federal income tax of 1913 was constitutionally valid even though it imposed an unapportioned direct tax. Ratification of the 16th Amendment removed the constitutional barrier against unapportioned direct taxes. As for Idaho, the court stated in Diefendorf v. Gallet, 51 Idaho 619 (1932), the Idaho income tax, which is an excise tax and not a property tax, is constitutional.

The taxpayers continued with their argument by stating that the income tax is an excise tax. Citing Flint v. Stone Tracy Co., 220 U.S. 107 (1911), the taxpayers stated that, as an excise tax, the tax is laid upon the manufacture, sale or consumption of commodities, upon licenses and upon corporate privileges. The taxpayers stated that they provide for their existence by working in a nontaxable occupation of common right. The individual cannot be taxed for the mere privilege of existing.

The Tax Commission finds this argument arduous. It is well established that wages are income, United States v. Koliboski, supra. Regardless of whether the taxpayers believe their labor is property, Congress can, if it so chooses, select any object, occupation or transaction as the subject matter of an indirect tax. United States v. Robinson, United States v. Shivers, United States v. Rogers, 107 F.Supp. 38 (1952). The authority conferred upon Congress by Section 8 of Article I is exhaustive and embraces every conceivable power of taxation. Marco J. Sortillon v. Commissioner of Internal Revenue, 38 T.C.M. (CCH) 1097 (1979).

The taxpayers stated the income tax system is voluntary, and they chose not to volunteer. The taxpayers' belief that their obligation to file and pay income tax is completely voluntary is 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 taxpayers cited the U.S. Supreme Court ruling of Flora v. United States, 362 U.S. 145, 175 (1960), "Our tax system is based upon voluntary assessment and payment, not upon distraint." However, this quotation is out of context, because the court first noted that the government could collect the tax by exercising its power of distraint, "but we cannot believe that

completing resort to this extraordinary procedure is either wise or in accord with congressional intent." *Id.* at 175. In other words, Congress can collect taxes by force, but the court believed that Congress intended to give taxpayers an opportunity to comply before exercising that force.

When confronted by claims that income taxes are "voluntary," courts readily explain that the payment of income tax is mandatory, not optional.

Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary. United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), (per curiam); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988). The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), 'requires that every individual who earns a threshold level of income must file a tax return.' United States v. Pottorf, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to criminal penalty. *Id.*, (citing 26 U.S.C. § 7203)." United States v. Hartman, 915 F.Supp. 1227 (M.D.Fla. 1996).

The federal income tax is not voluntary, and a person may not elect to opt out of the federal tax laws by a unilateral act of revocation and rescission. See, e.g., *Lesoon v. Commissioner of Internal Revenue*, 141 F.3d 1185, 1998 WL 166114 (10th Cir. 1998); *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993); *Damron v. Yellow Freight System, Inc.*, 18 F. Supp. 2d 812, 819-20 (E.D. Tenn. 1998), *aff'd*, 188 F.3d 506 (6th Cir. 1999)." United States v. John L. Sasscer, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000).

The IRC requires that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. IRC section 6012. Every individual, which would seem to include the taxpayers, is required to participate in the filing of income tax returns. Therefore, the Tax Commission finds this argument without merit.

The taxpayers' assertion that "Commercial Law" governs state tax agencies is misplaced. The law of Idaho, not an undefined "Commercial Law," governs matters concerning Idaho's individual income tax. The United States Supreme Court has long recognized that the right to tax is a crucial attribute of state sovereignty. M'Culloch v. Maryland, 17 U.S 316, 428 (1819). "The

power to tax rests solely with the legislature, and is subject only to constitutional limitations.”  
Richey v. Indiana Dept. of State Revenue, 634 N.E. 2d 1375 (Ind. Tax Ct. 1994).

The taxpayers referenced the Uniform Commercial Code (UCC) regarding the manner in which the Tax Commission presented its Notice of Deficiency Determination. The taxpayers' references to the UCC suggest the state of Idaho must conform to the UCC in its dealings with taxpayers. However, Idaho Code section 28-1-102 sets out the purpose of the UCC. It states in pertinent part:

**Purposes - Rules of Construction - Variation by Agreement.**

- (1) This act shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) Underlying purposes and policies of this act are
  - (a) to simplify, clarify and modernize the law governing commercial transactions;
  - (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
  - (c) to make uniform the law among the various jurisdictions.  
(Emphasis added.)

The Uniform Commercial Code applies only to commercial transactions; it has no bearing on a determination of tax matters. Therefore, the Tax Commission finds the UCC argument inapplicable to the matter at hand.

Other than the tax protestor arguments mentioned, the taxpayers have provided no documentation or information that would show the returns prepared by the Bureau are incorrect. 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 taxpayers to show that the tax deficiency is erroneous. Id. Since the taxpayers 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 February 26, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER 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>
1995	\$1,265	\$316	\$582	\$2,163
1997	868	217	252	1,337
1998	2,072	518	441	<u>3,031</u>
			TOTAL DUE	<u>\$6,531</u>

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

An explanation of the taxpayers' right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2001.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

