

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15646
[Redacted],)	
)	DECISION
Petitioners.)	
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On May 7, 2001, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioners), asserting income tax, penalty and interest in the amount of \$44,566 for the tax year 1999.

On June 5, 2001, the petitioners filed a protest that the Commission treated as a petition for redetermination. The petitioners stated they did not wish to appear in person at an informal conference but asked that they be given until September 16, 2001, to submit written information and documentation to the Commission. The Commission agreed. However, as of the date of this decision, the petitioners have failed to submit the promised information and documentation. Therefore, this decision is based on the information contained in the Commission's file. The Commission has reviewed the file, is advised of its contents, and now issues this decision.

This is a nonfiler case. The petitioners' representative filed a document entitled "Legal Notice" with the Tax Commission for the 1999 tax year. The Legal Notice filed by the representative reported the petitioners received \$563,503 of gross income for the year. However, the representative asserted the petitioners' reported income was not subject to Idaho's individual income tax.

The Commission's Tax Enforcement Specialist (specialist) contacted the petitioners and explained the "Legal Notice" filed with the Tax Commission did not qualify as a valid tax return. The specialist also advised the petitioners they would be treated as nonfilers unless they filed a

proper tax return and offered to send the petitioners the necessary Idaho income tax forms and instructions.

The petitioners declined to file an Idaho income tax return, so the Enforcement Specialist prepared a provisional return for the petitioners, using the income information reported on the petitioners' Legal Notice. In preparing the provisional returns, the specialist provided the petitioners with personal deductions, a grocery credit and a credit for withholdings tax. The provisional return indicated the petitioners owed \$44,566 (tax, penalty and interest) for the 1999 tax year, and the specialist issued a Notice of Deficiency Determination in that amount.

In the protest filed with the Commission, the petitioners assert they are not required to file income tax returns or pay federal and Idaho income tax because: (1) they are sovereign citizens rather than Idaho residents, and therefore, they are not subject to the tax laws of Idaho; (2) federal and state taxes are based solely on "voluntary compliance"; (3) their wages are not "income" subject to tax; (4) the Idaho income tax is an unconstitutional excise tax; and (5) the Tax Commission does not have the authority to issue a Notice of Deficiency Determination.

The Tax Commission finds the petitioners' grounds for protest are erroneous as a matter of law. The courts have addressed and rejected these common tax protestor arguments. Idaho law clearly sets forth the petitioners' obligation to file a tax return and pay the amount of tax correctly shown as due on that return. The Commission is authorized to issue a Notice of Deficiency Determination when an individual fails to satisfy his or her state tax obligations.

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 record before the Tax Commission demonstrates the petitioners were Idaho residents

during the year 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 that they lived in Boise, Idaho, during the 1999 tax year. The petitioners reported as much on the “Legal Notice” they filed with the Commission. Accordingly, the petitioners were domiciled in, and residents of, the state of Idaho.

The courts have consistently rejected claims of “sovereignty citizenship” which attempt to circumvent a person’s residency status and 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 obligation to file returns and pay income tax is not 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 record before the Commission also reveals that the petitioners received income in excess of the statutory amount that triggers a person’s filing requirement. 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 petitioners reported gross income of more than \$500,000 far exceeds the threshold amount.

The petitioners' argument that their wages are not income is without merit. 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 also have addressed and rejected the common tax protestor argument that individuals are not required to file returns or pay the tax because 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.

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. 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 Determination.

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

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 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 Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioners to show that the tax deficiency is erroneous. Id. Since the petitioners have 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 May 7, 2001, 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>
1999	\$32,998	\$8,247	\$4522	\$45,767

Interest is calculated through December 31, 2001, and thereafter will continue to accrue at the rate of \$6.33 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

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