

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 15687
[REDACTED],)
) DECISION
)
Petitioner.)
_____)

On April 26, 2001, 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 \$88,791 for the taxable years 1993 through 1999.

On June 15, 2001, the petitioner filed a protest that the Commission treated as a petition for redetermination. The petitioner did not participate in an informal conference in person or by telephone. Instead, the petitioner resubmitted his written protest. The petitioner's written submissions were placed in the Commission's file.

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 its decision.

This is a nonfiler case. The petitioner did not file Idaho income tax returns for the taxable years 1993 through 1999. The petitioner lives in [Redacted], Idaho. He is married, but his wife is not listed on the Commission's Notice of Deficiency Determination.

The petitioner received payments from [Redacted] and [Redacted] for services performed. [Redacted] reported the payments for income tax purposes on Form 1099-NEC (non-employee compensation). As reported by the businesses, the petitioner received total payments ranging from approximately \$90,000 to \$120,000 during each of the tax years in question.

Based on this information, the Tax Commission's Enforcement Specialist ("specialist") concluded the petitioner had an Idaho income tax filing requirement. The specialist contacted the

petitioner and asked for additional information. When contacted about his Idaho income tax filing requirement, the petitioner responded by submitting standard tax protester arguments regarding his requirement to file federal and state income tax returns.

Because the petitioner declined to file Idaho income tax returns, the specialist prepared provisional returns for the petitioner using the information reported on Form 1099-NEC to determine the petitioner's gross income. The specialist provided the petitioner with personal deductions and exemptions, as well as grocery credits, in preparing the provisional returns. The provisional returns showed a total deficiency of \$88,791 (tax, penalty and interest) and the specialist issued a Notice of Deficiency Determination in that amount.

The petitioner asserts he is not required to file or pay federal and Idaho income tax because: (1) he is a "sovereign" rather than an Idaho resident, and therefore, is not subject to the tax laws of Idaho; (2) his wages are not "income" subject to tax; (3) federal and state taxes are based solely on "voluntary compliance"; (4) the Idaho income tax is an unconstitutional excise tax; and (5) the Tax Commission did not have the authority to issue a Notice of Deficiency Determination.

The courts have addressed and rejected these common tax protestor arguments. Idaho law clearly sets forth the petitioner's obligation to file tax returns and pay the amount of tax shown as due on that return. In the event an individual fails to file a return or pay the tax due, the Commission is authorized to issue a Notice of Deficiency Determination.

The courts have consistently 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 protection of its laws are inseparable from responsibility for sharing the costs of government."

The record before the Tax Commission demonstrates the petitioner was domiciled in Idaho. The petitioner does not dispute that he lived in Idaho during the tax years in question. His Idaho domicile means that the petitioner also is a resident of Idaho for Idaho income tax purposes. 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 Idaho income tax filing requirements are set out in Idaho statute. Idaho Code § 63-3030 provides that every resident who has 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. In addition to establishing the petitioner's residency status, the record before the Commission shows the petitioner received gross income in excess of the threshold amount.

In 1993, a married person with an annual gross income in excess of \$1,000 was required to file an Idaho individual income tax return. The legislature later amended the statute and raised the threshold amount. In 1996, the threshold amount was \$2,550. The petitioner's income information reported on Forms 1099-NEC demonstrates the petitioner received gross income exceeding \$90,000, an amount well in excess of the statutory threshold amounts of income triggering a married person's obligation to file for the tax years in question.

Contrary to what the petitioner asserts, the courts have consistently held that wages or "compensation for labor" is 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 have rejected 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).

Additionally, the courts addressed and rejected the argument that 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 must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. In sum, the petitioner was required to file Idaho individual income tax returns and to 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 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 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 the information reported by [Redacted] and [Redacted] on Form 1099-NEC indicated the petitioner was required to file and report taxable income. Because the petitioner was domiciled in Idaho and was an Idaho resident, the specialist correctly determined the petitioner’s 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 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 April 26, 2001, 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>
1993	\$9,356	\$2,339	\$5,854	\$17,549
1994	8,006	2,002	4,402	14,410
1995	6,807	1,702	3,153	11,662
1996	7,788	1,947	2,949	12,694
1997	7,704	1,926	2,256	12,018
1998	8,198	2,050	1,770	11,969
1999	7,914	1,979	1,131	<u>11,024</u>

