

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15754
[Redacted])	
Petitioner.)	DECISION
)	
)	

On May 8, 2001, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioner), asserting income tax, penalty, and interest in the amount of \$15,637 for the taxable years 1996 through 1998.

On July 3, 2001, the petitioner filed a protest. The petitioner requested a hearing before the Tax Commission that was scheduled for December 4, 2001. Prior to the hearing, the petitioner telephoned the Tax Commission and canceled his hearing and stated he would send additional documentation to support his case. 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 affirming the NOD.

In June 2000, the Tax Commission was forwarded a copy of the petitioner's [Redacted] audit for 1996 [Redacted].

The petitioner, who resides in [Redacted], Idaho, has not filed Idaho individual income tax returns for at least the 1996 through 1998 taxable years. The petitioner obtained an Idaho driver's license in 1996 and renewed it in 2000.

On October 10, 2000, the Tax Enforcement Specialist (specialist) of the Tax Discovery Bureau sent a letter with a questionnaire to the petitioner to help the Commission properly determine the petitioner's filing requirement.

On October 20, 2000, the petitioner promptly responded to the nonfiler letter and stated in pertinent part:

All forms pertaining to my individual income tax status for the years you requested has [sic] been properly filed. . . .

The fact is, I moved to Idaho State in December 1995. . . .

As of the date of this decision, there is no record of the petitioner having filed any tax returns with the Tax Commission.

Based on the petitioner's [Redacted] and other income information received [Redacted] the specialist prepared provisional returns for the petitioner. The specialist provided the petitioner with standard deductions and personal exemptions in preparing the provisional returns. The provisional returns showed a total deficiency of \$15,637 (tax, penalty and interest) and the specialist issued a NOD in that amount.

In the petitioner's protest letter received July 6, 2001, he stated in pertinent part:

You have determined out of thin air the taxes you claim I owe for the years of 1997 and 1998 This is completely **FRAUD** as I personally never worked anywhere during those two years 97 or 98.

The petitioner also responded by submitting standard tax protester arguments regarding his requirement to file federal and state income tax returns.

The specialist sent the petitioner's file to the Tax Commission's legal/tax policy division on August 28, 2001, for further review.

The Tax Commission's Tax Policy Specialist (policy specialist) sent the taxpayer a hearing rights letter on September 25, 2001, to inform him of his alternatives for redetermining his protested NOD.

The petitioner requested a telephone informal hearing in his letter received October 16, 2001.

A telephone informal hearing was scheduled for December 4, 2001. Prior to his hearing, the petitioner called the Commission's legal/tax policy division and canceled his hearing. He said he would send additional information.

On March 27, 2002, the policy specialist sent a letter to the petitioner requesting that the information be submitted by April, 15, 2002.

On April 12, 2002, the petitioner submitted more standard tax protester arguments regarding his requirement to file federal and state income tax returns.

On June 3, 2002, a summons was issued to [Redacted] requesting a copy of the petitioner's mortgage application for his property located at [Redacted] located in Kootenai County. On October 10, 2002, a copy of the petitioner's mortgage application from [Redacted] was received by the Tax Commission. The petitioner claimed in this mortgage application dated December 4, 1998, that he was self-employed and operated a business called [Redacted], Idaho with 20 years on this job. He also claimed on this mortgage application that his base employment income was \$6,000.00 per month.

The Tax Commission finds the petitioner's legal arguments are erroneous as a matter of law. The courts have addressed and rejected these common tax protestor arguments time and time again. Additionally, Idaho law clearly sets forth the petitioner's obligation to file tax returns and pay the amount of tax correctly due on that return. The Commission is authorized to issue a Notice of Deficiency Determination when an individual fails to satisfy his or her obligation.

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 protections of its laws are inseparable from responsibility for sharing the costs of government."

The record before the Tax Commission demonstrates the petitioner was an Idaho resident 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 petitioner does not dispute that he lived in [Redacted], Idaho, during the tax years in question. He possessed Idaho driver's licenses, owned property in Idaho, and filed for and received a homeowner's exemption regarding his real property at [Redacted], Idaho. The petitioner was domiciled in Idaho during the years in question, and continues to be domiciled in Idaho. He is a resident of Idaho.

The courts have 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 petitioner's annual income exceeded the threshold amount determined by law. For example in 1996, a single person with an annual gross income in excess of \$6,500 was 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. Therefore, under Idaho laws, the petitioner was required to file an Idaho individual income tax return and to pay the Idaho income tax correctly due on that return.

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 hereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery

As stated above, the specialist found that the income information reported to the [Redacted] indicated the petitioner was required to file and report taxable income. Because petitioner was domiciled in Idaho and was an Idaho resident, the specialist correctly determined that the petitioner's income was subject to Idaho individual income tax and issued a NOD.

It is well settled in Idaho that a NOD 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 Commission, 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 May 8, 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>
1996	\$5,222	\$1,306	\$2,358	\$ 8,886
1997	3,397	849	1,238	5,484
1998	1,576	394	452	<u>2,422</u>
			TOTAL DUE	<u>\$16,792</u>

Interest is calculated through February 21, 2003.

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 _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, 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]
