BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 15819
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
	)	

On January 9, 2002, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner). The notice advised the petitioner the Bureau had determined the petitioner owed $4,333 (tax, penalty, and interest) for the 1998 and 1999 taxable years. The notice also advised the petitioner he could file a petition for redetermination with the Commission if he disagreed with the Bureau's determination.

On February 5, 2002, the petitioner filed a letter of protest that the Commission treated as a petition for redetermination. The petitioner declined to participate in an informal conference.

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. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau.

This is a nonfiler case. The petitioner did not file an Idaho individual income return for the taxable years in question. The petitioner lived in Idaho during the years in question. A federal audit conducted by the Internal Revenue Service determined the petitioner received wages and other compensation, as reported on Forms W-2 and 1099, of more than $28,000 during each of the taxable years at issue.

On August 1, 2001, a Tax Enforcement Specialist (specialist) of the Bureau contacted the petitioner and advised the petitioner that, based on the available information, it appeared he was required to file an Idaho income tax return. The specialist requested that the petitioner complete a questionnaire that would provide the Commission with additional information to further determine whether or not the petitioner was required to file a return. The petitioner declined to complete the questionnaire or file a tax return.

Subsequently, the specialist prepared provisional returns for the petitioner. To determine the petitioner's gross income, the specialist relied upon information gathered by the Internal Revenue Service during the federal audit. The specialist provided the petitioner with personal deductions and exemptions as well as grocery credits. Once completed, the provisional returns showed a tax deficiency existed for the taxable years 1998 and 1999. As indicated above, the specialist issued a Notice of Deficiency Determination. The Notice of Deficiency Determination included an explanation of the deficiency determination, a copy of the provisional returns prepared by the specialist, a document showing the calculation of interest, and an explanation of the petitioner's right to request a redetermination of the deficiency.

The petitioner now seeks a redetermination of the deficiency on several grounds. The petitioner believes he is not required to report his wages and other compensation on his tax returns or pay Idaho individual income taxes because: (1) he is a sovereign rather than an Idaho resident, and, therefore, he is not subject to the tax laws of Idaho; (2) his wages are compensation for his labor rather than "income;" since wages are not income, they are not subject to tax; (3) only persons, such as corporations, engaged in a commercial or licensed activity must file returns and pay individual income tax; and (4) the Tax Commission lacked the authority to determine the correct amount of tax and issue a Notice of Deficiency Determination.

State and federal courts have rejected these common tax protestor themes time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned,

> Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. "Tax protesters" have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The petitioner asserts some of the same arguments discussed by Judge Easterbrook. He believes his tax obligation has somehow been eliminated despite the fact that he lives in Idaho and earned a living. Simply stated, the petitioner's arguments are not supported by fact or law.

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 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 he lived (was domiciled) in Idaho during the taxable years in question.

Instead, the petitioner maintains he is an individual "sovereign." The petitioner asserts that as a sovereign he is a separate entity, apart from the state of Idaho and its citizens, and therefore beyond the state's taxing jurisdiction. The courts have consistently rejected claims of "sovereignty" that 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 petitioner also claims he is exempt from taxation under the Idaho Income Tax Act because his compensation is not "income." Relying on Eisner v. Macomber, 252 U.S. 189 (1920), the petitioner argues the term "income" is not defined under state or federal law, and that the U.S. Supreme Court said that "income" is limited to a corporate profit or profit of a government-regulated entity. This is not what the Court said.

In Merchants' Loan & Trust Company v. Smientanka, 255 U.S. 509 (1921), the Court said 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.

As the Court stated in Eisner, the term "income" is defined for income tax purposes as gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. One further note on the definition of the word "income." The Court in Merchant's stated, "In determining the definition of the word 'income' thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definitions quoted, what it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution."

The Supreme Court of Idaho also stated that the terms used in statutes are given their plain, ordinary meaning. The plain, ordinary meaning of a term can be found in the dictionary definition of the term. *See* Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993). Webster's New Collegiate Dictionary defines income as a gain or recurrent benefit usually measured in money that derives from capital or labor.

Since Eisner, 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).

Idaho Code §63-3022 defined the term "taxable income" to mean "'taxable income' as defined in section 63 of the Internal Revenue Code, adjusted as provided" in the Idaho Income Tax Act. Section 63 of the Internal Revenue Code defines taxable income as "gross income minus the deductions allowed under this chapter." Section 61 of the Internal Revenue Code provides that, except as otherwise provided in Subtitle A of the Internal Revenue Code, "gross income means all income from whatever source derived." Idaho has incorporated these provisions in its tax laws.

> **63-3002. Declaration of intent.** It is the intent of the legislature by the adoption of this act, **insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code** relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal

> Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; **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. **All of the foregoing is subject to modifications in Idaho law** including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Idaho Code § 63-3002 (Emphasis added). As incorporated into the Income Tax Act by Idaho Code § 63-3002, an individual is subject to Idaho income tax on his income from all sources, unless express federal or state exemptions, adjustments, or limitations apply. The petitioner has not provided any information to establish that his income is exempt under the Internal Revenue Code or under any other law.

The petitioner next claims the state of Idaho is without the power or authority to require him to file a return or impose a tax. The gist of the petitioner's argument is that the state has the power to regulate only those entities which it creates or for which it authorizes creation. Thus, a state may tax a corporation that is created under state authority but may not tax an individual.

Under our federalist system of government, the power to raise revenue to support the functioning of the government [i.e., the power to tax] is generally considered a concurrent state and federal power. The power of the states to tax the income of individuals was first established by the United States Supreme Court in <u>Shaffer v. Carter</u>, 252 U.S. 37 (1920). In that case, Shaffer brought suit to enjoin the state of Oklahoma from collecting any tax assessed against him under the state's income tax law. Although Shaffer was a nonresident of Oklahoma, the Court found that the Oklahoma tax on his Oklahoma source income was constitutional. Justice Pitney, writing for the Court, stated:

> In our system of government the states have general dominion, and, saving as restricted by particular provisions of the federal Constitution, complete dominion over all persons, property, and business transactions within their border; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses.

Id. at 51. Justice Pitney went on to write that:

> Income taxes are a recognized method of distributing the burdens of government, favored because requiring contributions from those who realize current pecuniary benefits under the protection of the government, and because the tax may be readily proportioned to their ability to pay. Taxes of this character were imposed by several of the states at or shortly after the adoption of the Federal Constitution.
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> The rights of the several states to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of this court. In *McCulloch v. Maryland*, 4 Wheat. 316, while denying their power to impose a tax upon any of the operations of the federal government, Mr. Chief Justice Marshall, speaking for the court, conceded (pp. 428-429) that the states have full power to tax their own people and their own property, and also that the power is not confined to the people and property of a state, but may be exercised upon every object brought within its jurisdiction saying: "It is obvious, that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation," etc.
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> In *Michigan Central R.R. Co. v. Powers*, 201 U.S. 245, the court, by Mr. Justice Brewer, said (pp. 292, 293): "We have had frequent occasion to consider questions of state taxation in the light of the federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over state taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods."
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> That a state may tax callings and occupations as well as persons and property has long been recognized.
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> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. . . . It [taxation] may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal

> Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."
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> And we beem [sic] it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders.

Id. at 51-52. (Citations omitted.) *See also*, People of State of New York, ex rel. Cohn v. Graves, 300 U.S. 308, 312-13 (1937) discussed above.

The record before the Commission also demonstrates the petitioner 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. During each of the taxable years, the petitioner received more than $28,000 of compensation. The filing threshold for a single person was gross income in excess of $6,800 for the taxable year 1997 and $6,950 for the taxable year 1998. Pursuant to Idaho Code § 63-3030 the petitioner was required to file returns for the taxable years in question.

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

The specialist found a deficiency existed based on the best factual information available to the specialist. 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, prepared provisional returns, and issued a Notice of Deficiency Determination.

It is well settled in Idaho that provisional returns determined by the Idaho State Tax Commission are 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. The petitioner has failed to show that the provisional returns prepared by the Tax Commission were incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the petitioner's taxable income for the taxable years in question and that the amount shown due on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated January 9, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty and interest:

YEAR	TAX	PENALTY	INTEREST	TOTAL
1998	$1,485	$371	$363	$2,219
1999	$1,526	$382	$261	$2,169
			TOTAL DUE	$4,388

Interest is calculated through June 28, 2002, and thereafter will continue to accrue at the rate of $0.58 per day until paid.

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

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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]

RECEIPT NO. [Redacted]
[REDACTED]

____
ADMINISTRATIVE ASSISTANT