

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 16145
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On September 7, 2001, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner). The Notice of Deficiency Determination asserted tax, penalty, and interest in the amount of \$6,894 for the 1998 and 1999 taxable years. The Notice advised the petitioner he could file a petition for redetermination with the Commission if he disagreed with the Bureau's determination.

On November 2, 2001, 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 or to submit additional information to the Commission.

Therefore, the Commission's decision is based on the information contained in its files. The Commission reviewed all of the documents and information contained in the files, is advised of their contents, and now issues its decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Tax Discovery Bureau.

This is a nonfiler case. The petitioner failed to file both federal and Idaho individual income tax returns for the 1998 and 1999 taxable years.

The petitioner lived in Boise, Idaho during the taxable years in question. As reported on his W-2 forms, the petitioner received wages or other compensation from [Redacted]. [Redacted] reported it paid the petitioner \$45,424 during the taxable year 1998 and \$32,382 during the taxable year 1999.

A Tax Enforcement Specialist (specialist) of the Bureau reviewed this information and determined the petitioner was an Idaho resident with gross income of a sufficient amount to require the petitioner to file Idaho returns. In a letter dated February 28, 2001, the specialist notified the petitioner that absent additional information it appeared the petitioner had a filing requirement. The specialist advised the petitioner he would be treated as a non-filer unless he filed a proper tax return for each of the taxable years in question. The specialist also sent the petitioner the necessary Idaho income tax forms and instructions.

The petitioner responded and stated the wages reported on his W-2 forms were not income subject to tax and asserted other arguments generally made by tax protestors.

The specialist recognized the petitioner's arguments as tax protestor arguments which the Commission has previously addressed and rejected. Therefore, after receiving the petitioner's response, the specialist prepared provisional returns for the 1998 and 1999 taxable years. The specialist provided the petitioner with personal exemptions, deductions, a grocery credit, and a credit for withholding tax. The total deficiency determined in the provisional returns amounted to \$6,894 (tax, penalty, and interest). The specialist issued a Notice of Deficiency Determination for that amount. The Notice of Deficiency Determination included an explanation of the 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.

The petitioner seeks a redetermination of the deficiency determined by the Bureau on several grounds. The petitioner apparently believes he is not required to report or pay taxes on his wages and other compensation because: (1) he is a natural born sovereign citizen rather than an Idaho resident, and, therefore, is not subject to the tax laws of Idaho; (2) he does not have

Idaho taxable income because his income does not derive from a “source” listed in Internal Revenue Code § 861; (3) his wages are not “income” subject to tax; (4) federal and state taxes are based solely on voluntary compliance; and (5) the Tax Commission did not have the authority to determine the amount of tax due and issue a Notice of Deficiency Determination.

The Tax Commission finds the petitioner’s grounds for protest are erroneous as a matter of law. 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 resided and earned a living in Idaho during the taxable years at issue.

Idaho law clearly sets forth the petitioner’s obligation to file a tax return and pay the amount of tax correctly shown as due on that return. 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 that he lived in [Redacted], Idaho, during the 1998 and 1999 taxable years. Accordingly, the petitioner was domiciled in, and a resident 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 courts also have rejected the argument that section 861 of the Internal Revenue Code (IRC § 861) exempts all income from taxation other than income earned from a foreign source. The Idaho and federal income taxes are based on a person’s gross income. Internal Revenue Code section 61 defines the term "gross income" to mean all income from whatever source derived and then it gives a non-exclusive list of various types of income.

The federal regulations state that U.S. citizens (and residents) are taxed on all of their income regardless of where the source is located.

In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.

Treas. Reg. § 1.1-1(b). Thus, the general rule is that for United States citizens and residents all income is included in gross income, and the taxpayer must demonstrate that the income is not taxable.

Idaho follows the same rule in taxing a resident's income. Idaho Code § 3002, provides:

**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 § 3002 (emphasis added).

In contrast, nonresident aliens and foreign corporations are taxed only on income from sources within the United States. Consequently, it is necessary to identify the sources of income (and deductions) for nonresident aliens and foreign corporations. This is what IRC § 861 and the accompanying regulations address.

The courts rejected the petitioner's argument that a citizen and resident of the United States is not taxed on income earned within the United States, but is instead taxed only on income received from the sources identified in IRC § 861.

Apparently, petitioner believes that the only sources of income for purposes of section 61 are listed in section 861, that income from sources within the United

States is taxed only to nonresident aliens and foreign corporations pursuant to sections 871, 881, and 882, and that section 1461 is the only section of the Internal Revenue Code that makes anyone liable for the taxes imposed by sections 1 and 11.

Section 61(a) defines gross income generally as “all income from whatever source derived,” including, but not limited to, compensation for services and interest. Sec. 61(a)(1), (4). Section 63 defines and explains the computation of "taxable income". Section 1 imposes an income tax on the taxable income of every individual who is a citizen or resident of the United States.

Habersham-Bey v. Commissioner, 78 T.C. 304, 309 (1982). *See also* Aiello v. Commissioner, T.C. Memo. 1995-40.

Similarly, the federal district court in the eastern district of Wisconsin followed that same analysis in rejecting a taxpayer’s argument that the state of Wisconsin could only tax income derived from sources listed in IRC § 861.

Plaintiff argues further that his remuneration is exempt from taxation under 26 U.S.C. § 861(a)(3)(C)(ii), and thus excludable under 26 U.S.C. § 61 and, by reference, excludable under Wisconsin law. Suffice it to say that if plaintiff wished to avail himself of § 861(a)(3)(C)(ii), he would have to show that his work was done for a foreign office, or an office in a United States possession, of a domestic business entity. He has not alleged this, and it is clear from the record that he performed his work in the State of Wisconsin for Wisconsin employers.

Peth v. Breitzmann, 611 F. Supp 50 (E.D. Wis. 1985). *See also* Solomon v. Commissioner, T.C. Memo 1993-509, and Dacey v. Commissioner, T.C. Memo 1992-187. IRC § 861 applies to nonresident aliens and foreign corporations; it does not apply to resident citizens.

Internal Revenue Service Notice 2001-40 is the Service’s interpretation of IRC § 861. Consistent with the authority noted above, the Service stated that IRC § 861 does not apply to resident citizens such as the petitioner in this case.

Despite the petitioner’s interpretation of IRC § 861, neither the federal tax code nor Idaho’s tax statutes exclude the petitioner’s wages and other compensation from taxation by the state of Idaho.

The petitioner next argues that the term "income" is not defined under state or federal law but that the U.S. Supreme Court said that "income" is limited to a corporate profit. This is not what the Court said.

In Merchant's 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 v. Macomber, 252 U.S. 189 (1920), 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.

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 also 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).

As discussed above, 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. The filing threshold amount for a single individual was \$6,950 for the taxable year 1998 and \$7,050 for the taxable year 1999. The petitioner's income information reported on his W-2 forms demonstrates the petitioner received gross income well in excess of these statutory thresholds.

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. Contrary to the petitioner's arguments, he had taxable income subject to Idaho individual income tax. In sum, the petitioner was required to file an Idaho individual income tax return and pay the Idaho income tax that was correctly due on those returns.

The Tax Commission is charged with the duty of examining the returns filed with it and determining the correct amount of tax due.

**63-3040. EXAMINATION OF RETURN AND DETERMINATION OF TAX.** As soon as practicable after the return is filed, the state tax commission shall examine it and shall determine the correct amount of the tax.

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 . . . .

As stated above, the Enforcement Specialist found the information reported by the petitioner's employer on his W-2 forms indicated the petitioner was required to file and report his 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, 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 September 7, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following taxes, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$2,966	\$ 742	\$ 724	\$4,432
1999	\$1,878	\$ 470	\$ 322	<u>\$2,670</u>
			TOTAL DUE	<u>\$7,102</u>

Interest is calculated through June 28, 2002, and will continue to accrue at the rate of \$0.94 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

\_\_\_\_\_  
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]  
[REDACTED]

Receipt No. [Redacted]

ADMINISTRATIVE ASSISTANT 1