

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16319
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

On November 29, 2001, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1994 through 1999 in the total amount of \$11,609.

On January 24, 2002, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to submit additional documents and information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information [Redacted] that the taxpayer received income that might give the taxpayer a filing requirement with the state of Idaho. The Bureau researched the Tax Commission's records and found that the taxpayer did not file Idaho individual income returns for the taxable years 1994 through 1999. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho income tax returns but the taxpayer did not respond.

The Bureau found that the taxpayer consistently renewed his Idaho driver's license and purchased resident Idaho fish and game licenses. The Bureau determined the taxpayer was required to file income tax returns and prepared returns for the taxpayer based upon the income information received. The Bureau sent the taxpayer a Notice of Deficiency Determination, which the taxpayer protested.

In the taxpayer's protest letter, he stated the notice of deficiency was invalid and presumptive not within the meaning of the statute for federal or the state of Idaho. He said the Tax Commission did not establish an income tax "liability" or status of "Taxpayer" or the requirement to file returns for either federal or state pursuant to the statute. The taxpayer also contested the authority of the Bureau's staff to sign and send out deficiency notices.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer chose to provide additional documents and information explaining and supporting his position. The Tax Commission reviewed all that the taxpayer provided and found nothing persuasive in the taxpayer's arguments. The following is a discussion of the major arguments the taxpayer proffered.

[Redacted]. The taxpayer cited Portillo v. C.I.R., 932 F.2d 1128 (1991), stating that examination reports and 1099s do not establish proof of tax liability. He included in this argument that there could be no federal liability because he did not file federal income tax returns. Without returns being filed the [Redacted] does not have the ability to determine a deficiency. As deficiency is defined in the Internal Revenue Code (IRC), a deficiency can not be assessed unless a return is filed. Therefore, since the Idaho Code "piggybacks" the IRC, the Notice of Deficiency Determination sent by the Bureau is invalid, fraudulent, color of law only and void ab initio with no force or effect in law or equity.

The taxpayer's citing of Portillo has some merit, but the Tax Commission sees that case as distinguishable from the case at hand. In Portillo, the Commissioner of the IRS was relying on the presumption of correctness for its notice of deficiency to Portillo. However, the Court found that Portillo, by providing some proof, evidence, or lack of evidence on the

Commissioner's part, established that the Commissioner's assessment was arbitrary and erroneous in its determination that Portillo had unreported income.

In this case, the taxpayer has made no argument that he did not receive the income reported in the Tax Commission's Notice of Deficiency Determination. Rather, he goes into the argument that the deficiency determination is invalid because he has not filed income tax returns and a deficiency cannot be made unless a return is filed. The taxpayer cited IRC section 6211 and Idaho Code section 63-3044 as support for his position.

The taxpayer quoted part of IRC section 6211 and stated that the IRC does not have a provision for determining a deficiency if no return is filed. The taxpayer ignores Treasury Regulation section 301.6211-1, which states if no return is made or if the return does not show any tax, the amount shown as the tax for the taxpayer shall be considered as zero. The taxpayer stated the Treasury Regulation was based upon the repealed IRC section 271 and not the current law. Therefore, the regulation is not legislative and does not have the force and effect of law. For Idaho purposes, the taxpayer cited Idaho Code section 63-3044(1)(b) that addresses a deficiency where no return is filed. The taxpayer claimed the federal code and state code say the same thing; when there is no tax return or previously assessed deficiencies there can be no valid deficiency determination.

The Tax Commission's information does not show Treasury Regulation section 301.6211-1 as being repealed. Nevertheless, the Idaho Code addresses when no return is filed. Since there was no previous assessment and no return filed, the deficiency amount, for Idaho purposes, is the difference between the determined tax and zero. The Tax Commission finds no merit in this argument.

The taxpayer's next argument was that he has not been "made liable" for any tax. The taxpayer cited the privacy act notice and IRC sections 6001, 6011, and 6012 as supporting his contention that he has to be made liable by having notice served upon him. The taxpayer stated that the IRC does not make anyone liable or subject to or "required to pay" income taxes. The taxpayer also cited Idaho Code section 63-3024 as not making an individual liable for a tax. He stated Idaho Code section 63-3024 imposes a tax if an individual is required to file a return per Idaho Code section 63-3030 which in turn refers to IRC section 6012(a)(1) which brings you back to the privacy act notice.

IRC section 6011 states the "General requirement of return, statement, or list." Subpart (a) states,

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

This section provides for persons liable for any tax to make a return or statement in the form as directed by the Secretary.

IRC section 6012(a)(1) entitled, "Persons required to make returns of income" states in pertinent part,

(a) General rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, . . .

The taxpayer stated the IRC does not provide a requirement to file. On the contrary, the

court in In Re: Peter Kay Stern, 114 F.3d 1177 (4th Cir. 1997) stated,

. . . the duty to file returns and pay income taxes is clear. Section 1 of the Internal Revenue Code imposes a federal tax on the taxable income of every individual. Section 63 defines "taxable income" as gross income minus allowable deductions. Section 61 states that "gross income means all income from whatever source derived," including compensation for services. Sections 6001 and 6011 provide that a person must keep records and file a tax return for any tax for which he is liable. Finally, § 6012 provides that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. The duty to pay federal income taxes therefore is "manifest on the face of the statutes, without any resort to IRS rules, forms or regulations."

Therefore, since IRC section 1 imposes a tax on the taxable income of every individual and the taxpayer apparently had taxable income, the taxpayer was made liable, subject to, and required to pay income taxes. The court stated for federal purposes and, since the Idaho Code follows the IRC in establishing the threshold for filing income tax returns and the taxpayer's income exceeds that amount, the taxpayer was required to file Idaho individual income tax returns.

The taxpayer summarized his position by quoting Flora v. U.S., 362 US 145 (1960), "Our system of taxation is based upon voluntary assessment and payment, not upon distraint." Therefore, unless a taxpayer self-assesses himself by filing a return, no deficiency in tax can exist and there is no statutory authority to send out deficiency notices.

The taxpayer's belief that his obligation to file and pay income tax is completely voluntary is erroneous. 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. U.S., 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. C.I.R., 848 F.2d 1007, 1008 (9th Cir. 1988); U.S. v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985).

The taxpayer quoted the U.S. Supreme Court decision in Flora v. U.S.; however, the quotation the taxpayer used was taken out of context. Before the quote cited by the taxpayer, the court first noted that the government could collect the tax by exercising its power of distraint, "but we cannot believe that completing resort to this extraordinary procedure is either wise or in accord with congressional intent." *Id.* at 175. In other words, Congress can collect taxes by force, but the court believed that Congress intended to give taxpayers an opportunity to comply before exercising that force.

In Helvering v. Mitchell, 303 U.S. 391, 399 (1938), (which was cited in the Flora decision) the court explained voluntary compliance as follows:

In assessing income taxes, the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil."

Furthermore, when confronted by claims that income taxes are "voluntary," courts readily explain that the payment of income tax is mandatory, not optional.

Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary. United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), (per curiam); Wilcox v. C.I.R., 848 F.2d 1007, 1008 (9th Cir. 1988). The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), 'requires that every individual who earns a threshold level of income must file a tax return.' United States v. Pottorf, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to criminal penalty. *Id.*, (citing 26 U.S.C. § 7203)." United States v. Hartman, 915 F.Supp. 1227 (M.D.Fla. 1996).

The federal income tax is not voluntary, and a person may not elect to opt out of the federal tax laws by a unilateral act of revocation and rescission. See, e.g., Lesoon v. Commissioner of Internal Revenue, 141 F.3d 1185, 1998 WL 166114 (10th Cir. 1998); United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993); Damron v. Yellow Freight System, Inc., 18 F. Supp. 2d 812, 819-20 (E.D. Tenn. 1998), *aff'd*, 188 F.3d 506 (6th Cir. 1999)." United States v. John L. Sasscer, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000).

The arguments presented by the taxpayer did not persuade the Tax Commission that the taxpayer did not have an obligation to file an Idaho income tax return. The taxpayer also did not persuade the Tax Commission that the income reported as being received by him was not part of his taxable income.

The taxpayer provided no documentation or information that showed the returns prepared by the Bureau were incorrect. 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 taxpayer to show that the tax deficiency is erroneous. Id. Since the taxpayer failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau added interest and penalty to the taxpayer's tax in accordance with Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed these additions and found them to be appropriate.

WHEREFORE, the Notice of Deficiency Determination dated November 29, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for the taxable year(s):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$1,244	\$311	\$746	\$ 2,301
1995	1,207	302	618	2,127
1996	1,229	307	528	2,064
1997	1,230	308	421	1,959
1998	1,042	261	276	1,579
1999	1,338	335	257	<u>1,930</u>
			TOTAL DUE	<u>\$11,960</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' rights 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]

Receipt No. [Redacted]

ADMINISTRATIVE ASSISTANT 1