

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16719
[Redacted])	
Petitioner.)	DECISION
)	
)	
)	

On June 6, 2002, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency [Redacted] to [Redacted] (taxpayer), proposing additional income tax, penalty, and interest for the taxable year 2001 in the total amount of \$5,946.

On August 2, 2002, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a hearing, which was held on September 24, 2002, and attended by the taxpayer, Commissioner [Redacted]. The taxpayer stated his position and presented his arguments in support of his position. The Tax Commission, having reviewed the entire file, hereby issues its decision.

The taxpayer filed a 2001 Idaho income tax return showing no income. However, attached to the Idaho return the taxpayer included a copy of his W-2 wage statement showing earnings in excess of \$174,000. The taxpayer also included thirteen points as to why his Idaho and federal income tax returns showed zero income and why he was entitled to a full refund of the withholdings made from his salary or wages.

The taxpayer's return was identified during processing as a return with potential errors; therefore, and it was referred to the Tax Discovery Bureau (Bureau). The Bureau reviewed the return, corrected it, and sent the taxpayer a Notice of Deficiency Determination. The taxpayer protested the Bureau's determination. The taxpayer's protest centered on Idaho Code section 63-3002, which states, "the taxable income reported each taxable year by a taxpayer to the internal

revenue service shall be the identical sum reported to this state." The taxpayer claimed he had no "income" as defined by the U.S. Supreme Court; therefore, no income was reportable on his federal return. If he had put any other figure than zero on his Idaho return, he would have committed perjury.

The Tax Commission sent the taxpayer a letter giving him two options for having the Bureau's determination redetermined. The taxpayer chose a hearing before a Commissioner. During the hearing the taxpayer presented his arguments for the position he believed was correct.

The taxpayer stated that he completed his Idaho return, as the Idaho statutes require. He reported zero income on his federal income tax return, so he had to show zero income on his Idaho return. The taxpayer cited Idaho Code section 63-3002 as support for what he had done.

Idaho Code section 63-3002 states the intent of the Idaho legislature of the Idaho income tax act. It states in pertinent part,

. . . [t]o 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. . .

Section 63-3002 identifies the provisions of the Federal Internal Revenue Code for the measurement of taxable income. The end result of that measurement is that Idaho taxable income is the same as federal taxable income, subject to the modifications of the Idaho law. Therefore, if wages and salaries are included in the Internal Revenue Code (IRC) as a part of taxable income, they are also included for Idaho purposes.

The taxpayer argued that the word "income" is not defined in Federal law but that the Supreme Court defined income to mean corporate profit. The taxpayer provided an excerpt from the Supreme Court case Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509, 1126 (1921)

stating that the word income has the same meaning that it had in Corporation Excise Tax Act. From this the taxpayer makes the claim that income means corporate profit and since he had no corporate profit, he had zero income.

However, the Supreme Court did not say that income was corporate profit. The Court said the Corporation Excise Tax Act of August 5, 1909 defined the word income. The Court said 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. It means income is, what the Court stated in Eisner v. Macomber, 252 U.S. 189, the gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. Therefore, income is not just corporate profit. Income includes, but is not limited to, all those items listed in IRC section 61.

The taxpayer argued that the current ICR section 61 makes no mention of "wages", "salaries" or "compensation for personal services" as being taxable as income. He reasoned that Congress, by eliminating such references in the 1954 Code, did not intend that wages or earnings fall within the meaning of income.

This is a tired argument with no basis. Wages are included in IRC section 61 under compensation for services, fees, commissions, etc. In United States v. Koliboski, 732 F.2d 1328, 1330 n.1 (7th Cir. 1984), the court stated,

Although not raised in his brief on appeal, the defendant's entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us are already aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: **WAGES ARE INCOME**. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages--or salaries--are not taxable. (Emphasis in original)

See also United States v. Lawson, 670 F.2d 923, 925 (10th Cir. 1982); United States v. Burus, 633 F.2d 1356, 1361 (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 Commission, 110 Idaho 572, 575 (Ct. App. 1986).

The taxpayer stated that he has not been "made liable" for any tax. The taxpayer cited the privacy act notice and IRC sections 6001 and 6011 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 him liable or require him to file an income tax return. The Tax Commission finds this argument frivolous and without merit.

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, except that a return shall not be required of an individual - . . .

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 had taxable income, the taxpayer was made liable, subject to, and required to file an income tax return. Likewise, Idaho Code section 63-3024 imposes a tax, measured by Idaho taxable income, on the income of individuals meeting the filing requirements of Idaho Code section 63-3030.

The taxpayer stated that our tax system is a voluntary compliance system or one of self-reporting. While it is true 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 U.S. Supreme Court in Flora v. United States, 362 US 145 (1960), 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. Commissioner of Internal Revenue, 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 taxpayer questioned the Tax Commission's authority to make changes to the income tax return he filed. He argued that if the Tax Commission made a change to his income, the Tax Commission would have to make a change to his federal income tax return because Idaho Code section 63-3002 requires Idaho taxable income to be identical to federal taxable income. The taxpayer stated he did not believe Idaho had the authority to change his federal income tax return.

Idaho Code section 63-3042 provides that the Tax Commission can examine any books, papers, records, or other data for the purposes of ascertaining the correctness of any return, determining the liability of any person for any tax or collecting any such liability of a taxpayer. Therefore, the Tax Commission has the authority and is in fact mandated by Idaho Code section 63-3040 to examine the correctness of an income tax return submitted to the Tax Commission. The changes made to the taxpayer's Idaho income tax return brought his return into compliance with the Idaho income tax statutes.

The Tax Commission having considered the taxpayers' arguments is not persuaded that the return submitted by the taxpayer was a true and accurate representation of the taxpayer's Idaho taxable income. The taxpayer provided nothing that convinced the Tax Commission his income was excluded from federal taxable income and therefore excluded from Idaho taxable income. The taxpayer's arguments are just another variation of tax protester rhetoric that has been dismissed by the courts and [Redacted]. Therefore, the Tax Commission upholds the adjustment made to the taxpayer's Idaho income tax return.

The Bureau added interest and penalty to the taxpayer's Idaho tax deficiency. The Tax Commission reviewed those additions and found the addition of interest appropriate per Idaho Code section 63-3045. However, the Tax Commission did not find that the record supported the addition of the fraud penalty.

Idaho Code section 63-3046(b) provides that “[i]f any part of any deficiency is due to fraud with intent to evade tax, then fifty per cent (50%) of the total amount of the deficiency . . . shall be so assessed, collected and paid.” Fraud in the tax context is defined as an intentional wrongdoing on the part of the taxpayer with the specific intent to avoid taxes known to be owing. Idaho State Tax Comm’n v. Hautzinger, 137 Idaho 401, ___, 49 P.3d 406, 408 (2002). Fraud

must be proved by clear and convincing evidence. Id. However, fraud may be established by circumstantial evidence and such things as understating income or overstating deductions, maintaining inadequate records, and implausible or inconsistent behavior, are all indicative of a person's intent to evade tax.

The burden of proof for fraud is on the party alleging the fraud. Therefore, the Tax Commission has the burden of proving that the taxpayer had the intent to evade or avoid taxes known to be owed. Suffice it to say, the record does not show that intent by the taxpayer. Therefore, the Tax Commission cannot uphold the fraud penalty. However, the Tax Commission did find that the negligence penalty was applicable and hereby adds that penalty to the taxpayer's tax liability.

WHEREFORE, the Notice of Deficiency Determination dated June 6, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$3,899	\$ 195	\$ 227	\$4,321

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

An explanation of the petitioner's 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]

[Redacted]
