

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16864
[REDACTED])	
Petitioner.)	DECISION
)	

On July 26, 2002, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner) proposing income tax, penalty, and interest for taxable years 1995 through 2000 in the total amount of \$6,950.

On September 9, 2002, the petitioner responded to the Notice of Deficiency Determination stating he was not a taxpayer and therefore not subject to the tax. The Bureau considered the petitioner's letter a timely protest. The petitioner did not request a hearing, but rather chose to rely on the information provided in his letters to the Tax Commission to support his position. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information from the Idaho Department of Labor that the petitioner received wages from an Idaho employer. The Bureau sent the petitioner a letter asking him about his requirement to file Idaho income tax returns. The petitioner did not respond. Therefore, the Bureau [Redacted] prepared income tax returns for the petitioner.

The Bureau sent the petitioner a Notice of Deficiency Determination to which the petitioner responded that he was not a taxpayer and was not involved in a "revenue taxable activity." The petitioner stated that through his study of the tax code and the constitution he found that there was no contract between him and the Tax Commission. The petitioner stated that he rescinds, revokes, and cancels all previous signatures on any forms he may have given to the Tax Commission, and that

the Tax Commission did not have jurisdiction over him.

The Tax Commission sent the petitioner a letter giving him two options for having the Notice of Deficiency Determination redetermined. The petitioner responded that he was not a taxpayer and therefore could not be a tax protestor. He stated he did not work for the government, and therefore the Tax Commission had no jurisdiction over him. He stated the American public had been deceived in paying a voluntary tax. The petitioner did not desire a hearing. He stated his two letters clearly explained his position.

The petitioner stated he was not a taxpayer. Idaho Code section 63-3009 defines the term "taxpayer" as any person subject to a tax imposed by the Idaho income tax act or required by the provisions of the Idaho income tax act to file an income tax return, report income or pay a tax. Idaho Code section 63-3002 states the intent of the Idaho legislature to impose a tax on the residents of Idaho. Idaho Code section 63-3024 imposes a tax on every individual that is required to file a return. Idaho Code section 63-3030 requires that every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code (IRC) file an Idaho return. Idaho Code section 63-3008 defines an individual as a natural person.

The petitioner is an individual and he is a resident of the state of Idaho. Therefore, he is subject to being taxed by the state of Idaho and considered a taxpayer.

The petitioner stated he was not involved in a "revenue taxable activity." The Tax Commission is unclear exactly what the petitioner is arguing here. The petitioner was employed in 1995 through 2000 and was paid approximately \$20,000 each year for his labor. Wages or compensation is included in the definition of gross income found in section 61 of the Internal Revenue Code. Since gross income is the starting point in determining taxable income, one would

presume the petitioner's wages were received for a revenue taxable activity. The petitioner's argument of not engaging in a revenue taxable activity is irrelevant and not applicable.

The petitioner stated that he does not work for the government or in a territory over which the federal government has jurisdiction. The petitioner has provided no explanation for his theory that only government employees have gross income, and no support for this theory can be found by any rational review of the relevant federal and Idaho income tax laws. Idaho Code section 63-3002 states that a tax is imposed on residents measured by income from whatever source derived. Therefore, if the petitioner is a resident of Idaho, his tax is determined from all his income regardless of his status as a government employee.

The petitioner stated the Tax Commission does not have jurisdiction over him. He said, “You (Idaho Tax Commission) believe you have jurisdiction over me. I believe you don’t . . .”

Idaho’s jurisdiction to tax is founded in whether an individual resides within the boundaries of the state or if an individual has income from Idaho sources. The United States Supreme Court clearly proclaimed the states’ authority to impose taxes. The Court stated in Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221, 52 (1920):

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.

. . .

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 co-extensive with that to which it is a incident. All subjects over which the sovereign power of a State extends, are objects of taxation, etc." In *Michigan Central R.R. Co. v. Powers*, 201 U.A. 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." That a State may tax callings and occupations as well as persons and property has long been recognized. "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.

. . .

[J]ust as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein.

In *New York, ex rel Cohn v. Graves*, 300 U.S. 308, 57 S.Ct. 466, 312-13 (1937) the Court stated, "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. 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 Idaho legislature stated the purpose of the Idaho Income Tax Act in Idaho Code section 63-3002. The Legislature clearly stated that the Idaho income tax applies to residents of this state. (Idaho Code sections 63-3002 and 63-3024.) The Legislature defined the term resident in Idaho Code section 63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who was domiciled in this state. The petitioner enjoyed all the rights and privileges of living in Idaho. He received the protection of the laws for himself and his possessions. The petitioner presented no evidence to show he was not a resident of Idaho. Clearly, the state of Idaho has jurisdiction over the petitioner and, since the Tax Commission is charged with administering and enforcing Idaho's tax laws (Idaho Code section 63-105), it stands to reason the Tax Commission also has jurisdiction over the petitioner.

The petitioner made reference to not having any contract with the Tax Commission. He further stated and gave notice that he rescinds, revokes and cancels all previous signatures on any form that may have been construed to be a contract between him and the Idaho Tax Commission. Generally speaking, taxpayers do not contract with the state of Idaho and obviously there is no written contract between the petitioner and the State of Idaho. However, one could argue an implied contract exists by virtue of the taxpayer living within the boundaries of Idaho. New York, ex rel Cohn v. Graves, supra.

The petitioner made reference to a voluntary tax. The Tax Commission assumed by this statement the petitioner believes the tax laws are optional. 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 arguments the petitioner presented did not persuade the Tax Commission that the petitioner did not have an obligation to file an Idaho income tax return or that the petitioner did not have any taxable income. In addition, the petitioner failed to show that the returns prepared by the

Bureau were incorrect. He did not meet his burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). Therefore, the Tax Commission finds the returns the Bureau prepared are a fair representation of the petitioner's taxable income for the years in question.

The Bureau added interest and penalty to the petitioner's returns pursuant to Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed those additions and found them proper and in accordance with the Idaho Code.

WHEREFORE, the Notice of Deficiency Determination dated July 26, 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$ 260	\$ 65	\$144	\$ 469
1996	932	233	439	1,604
1997	1,004	251	386	1,641
1998	1,122	281	344	1,747
1999	763	191	179	1,133
2000	394	99	42	<u>535</u>
			TOTAL DUE	<u>\$7,129</u>

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 _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]
