

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17315
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated April 22, 2003 asserting additional income taxes, penalties, and interest totaling \$5,004 and \$1,483 for 1999 and 2000, respectively.

The petitioner had not filed Idaho income tax returns for the periods addressed by the Notice of Deficiency Determination. The petitioner was first contacted with regard to his failure to file in January, 2003. On April 22, 2003, not having received the returns in question, the Commission staff sent the petitioner the Notice of Deficiency Determination referred to above.

The petitioner filed this administrative appeal. He set forth numerous tax protestor arguments, none of which have merit, including:

1. That he had not entered into a contract to be subject to taxation;
2. That he was not a public employee, and therefore not subject to tax;
3. That wages were not income;
4. That he was not domiciled within the United States;
5. That the income tax was strictly voluntary (and he wasn't volunteering);
6. That the Idaho tax is an unconstitutional direct tax;
7. That a person in the private sector is only subject to tax if he volunteers;
8. That imposition of the income tax constitutes slavery;
9. That the Internal Revenue Code is not "positive law;"
10. That the income tax only applies to public officers and employees of the United States government;
11. That he can file a "statement" in lieu of a tax return, thereby relieving him of any income tax liability;
12. Estoppel by acquiescence.

We will now address some of the petitioner's positions regarding why he feels that he is not subject to the Idaho income tax. Some of the petitioner's arguments have to do with the propriety of the federal income tax and have little or nothing to do with the Idaho income tax. Arguments 1, 2, 5, 7, 10, and 11 fall within this category. Therefore, these arguments will not be further addressed in this decision. These issues are routine tax protestor arguments that have been regularly addressed and rejected in the federal courts. It is well settled that exemptions or exclusions from income tax are purely a matter of legislative grace and are generally construed strictly against the taxpayer. Bingler v. Johnson, 394 U.S. 741, 751-52 (1969); Commissioner of Internal Revenue v. Jacobson, 336 U.S. 28, 48-49 (1949). "[E]xemptions from taxation are not to be implied; they must be unambiguously proved." United States v. Wells Fargo Bank, 485 U.S. 351, 354 (1988). Here, the taxpayer has simply failed to provide an adequate factual or legal basis to substantiate his claim of exemption from Idaho tax.

WAGES ARE INCOME

Wages have long been held to be income. The U. S. Supreme Court held that, "[a]s to the alleged inequality of operation between mining corporations and others, it is of course true that the revenues derived from the working of mines result to some extent in the exhaustion of the capital. But the same is true of the earnings of the human brain and hand when unaided by capital, yet such earnings are commonly dealt with in legislation as income." Stratton's Independence, Ltd. v. Howbert, 231 U.S. 399, 415 (1913).

The Third Circuit Court of Appeals addressed the issue as follows:

Wages Are Income

[1] Connor argues that a tax on wages is a direct tax subject to the provision of Article 1, Section 2, Clause 3 of the Constitution which requires that direct taxes be apportioned by population. He

makes this claim despite the specific language of the Sixteenth Amendment that:

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Connor purports to find authority for his argument in Eisner v. Macomber, 252 U.S. 189, 40 S.Ct. 189, 64 L.Ed. 521 (1920), a case patently inapposite because it held merely that a stock dividend made to shareholders in their proportionate interests against profits accumulated by the corporation was not income. As the Supreme Court later explained in Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430 31, 75 S.Ct. 473, 99 L.Ed. 483 (1955), the Eisner Court held that the distribution of a corporate stock dividend changed only the form of the taxpayer's capital investment, and that because the taxpayer received nothing out of the company's assets for his separate use and benefit, the distribution was not a taxable event. Glenshaw reiterated that Congress intended to use the full measure of its taxing power in creating the income tax. *Id.* at 429, 75 S.Ct. at 475 76, citing, *inter alia*, Helvering v. Clifford, 309 U.S. 331, 334, 60 S.Ct. 554, 556, 84 L.Ed. 788 (1940).

Congress exercised its power to tax income by defining income as, *inter alia*, "compensation for services, including fees, commissions, fringe benefits and similar items." 26 U.S.C. § 61(a)(1) (Supp. II 1984). Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income. See, e.g., Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir.1986); Connor v. Commissioner, 770 F.2d 17, 20 (2d Cir.1985) (*per curiam*); Perkins v. Commissioner, 746 F.2d 1187, 1188 (6th Cir.1984) (*per curiam*); Funk v. Commissioner, 687 F.2d 264, 264 (8th Cir.1982) (*per curiam*).

Moreover, Connor's argument has already been rejected by this court. In Sauers v. Commissioner, 771 F.2d 64 (3d Cir.1985), cert. denied, 476 U.S. 1162, 106 S.Ct. 2286, 90 L.Ed.2d 727 (1986), the taxpayer argued, *inter alia*, that wages are property and therefore are not taxable income. *Id.* at 66 n. 2. This court agreed with the Tax Court that the taxpayer's "legal contentions were patently frivolous," *id.* at 66, and affirmed the decision of the Tax Court awarding the Commissioner damages for a frivolous claim under 26 U.S.C. § 6673. *Id.* at 6770. We take this opportunity to reiterate that wages are income within the meaning of the Sixteenth

Amendment. Unless subsequent Supreme Court decisions throw any doubt on this conclusion, we will view arguments to the contrary as frivolous, which may subject the party asserting them to appropriate sanctions.

United States v. Connor, 898 F.2d 942, 943-944 (3rd Cir. 1990).

JURISDICTION TO TAX

The petitioner's next claim of exemption theorizes that the state of Idaho is without the power or authority to impose a tax on him because, according to the petitioner, he is not a citizen of the United States and is not subject to its jurisdiction.

The petitioner's convoluted logic notwithstanding, the state of Idaho does not derive its jurisdiction to tax from whether or not an individual is a citizen of the United States. See 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. 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."); Shaffer v. Carter, 252 U.S. 37, 52 (1920) ("[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 a 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.")

Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his taxable income. "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, who resides in Idaho, has presented no evidence supporting his claim that he is not a resident of, or otherwise subject to the jurisdiction of, Idaho.

The Idaho Legislature has clearly set forth that the Idaho income tax applies to residents of this state. The Legislature has defined the term resident. The petitioner has presented no evidence to show that he is not a resident as that term has been defined.

IDAHO INCOME TAX IS NOT AN UNCONSTITUTIONAL DIRECT TAX

This argument apparently has its foundation in Article I, Section 9, Clause 4 of the U. S. Constitution which states:

“No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.”

Article 9 sets out powers denied the Congress. Powers denied the states are set out in Article 10. No language comparable to Clause 4 of Article 9 is found in Article 10. Therefore, if the petitioner is relying on Article I, Section 9, Clause 4 of the U. S. Constitution as a basis for his position (and this is not altogether clear), this argument has nothing to do with the constitutionality of the Idaho income tax and does not make him exempt from this tax.

THE IMPOSITION OF THE IDAHO INCOME TAX DOES NOT CONSTITUTE SLAVERY

The courts have previously dealt with this matter. It is a settled matter of law. The Tax Court held not only that the argument was not compelling but also that the negligence penalty was appropriate. In so holding, the court stated, in part:

The first section of the Thirteenth Amendment, in relevant part, states: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The Court of Appeals for the Tenth Circuit has noted that "if the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment." Porth v. Brodrick, 214 F.2d 925, 926

(10th Cir.1954); see also Peeples v. Commissioner, T.C. Memo.1986 584, affd. without published opinion 829 F.2d 1120 (4th Cir.1987); Lyon v. Commissioner, T.C. Memo.1978 347; Vernaccini v. Commissioner, T.C. Memo.1974 66. We shall deny petitioner's motion for summary judgment and sustain respondent's determination as to the deficiency.

Respondent also determined that petitioner is liable for an accuracy related penalty under section 6662(a) for negligence. Section 6662(a) provides that "there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies." Section 6662 applies to "the portion of any underpayment which is attributable to", inter alia, negligence or disregard of the rules or regulations. Sec. 6662(b)(1). Negligence "includes any failure to make a reasonable attempt to comply with the provisions * * * [of the Internal Revenue Code], and the term 'disregard' includes any careless, reckless, or intentional disregard." Sec. 6662(c).

Petitioner apparently argues that the Internal Revenue Code violates the Thirteenth Amendment and that this argument "has never been presented to the Court." He, therefore, contends that he is not liable for the negligence penalty even if we were to reject this argument. As is obvious from the cases cited supra, this Court and others have considered petitioner's argument and rejected it. Respondent's determination of the penalty under section 6662(a) is sustained.

Avery v. Commissioner, T. C. Memo 1999-418.

ESTOPPEL BY ACQUIESCENCE

The petitioner attempts to raise the common law defense of estoppel by acquiescence. The petitioner informed the Tax Commission that it had 60 days to refute the arguments set forth in his affidavit.

Obviously, the taxpayer's unilaterally imposed 60-day deadline is of no force or effect. The Idaho Legislature, in Idaho Code § 63-3068, has set forth the various statute of limitations provisions which control when the Tax Commission may exercise its audit and assessment authority. Section 63-3068(m), Idaho Code, allows the Tax Commission, by mutual agreement

with the taxpayer, to extend the statute of limitations period. However, nothing in that section gives either a taxpayer or the Tax Commission the authority, either unilaterally or by mutual consent, to decrease or otherwise limit the statute of limitations period.

The taxpayer's 60-day deadline notwithstanding, the elements of estoppel by acquiescence are not met here.¹ Estoppel by acquiescence is simply a form of equitable estoppel whereby the party against whom estoppel is being applied has failed to speak or to act, even though the party knows facts which require him to speak or act, and the other party reasonably relies to his detriment on the first party's silence. Here there was no failure to speak or act on the part of the Tax Commission. The Legislature of the state of Idaho has decreed in Idaho Code § 63-3068 what shall be a reasonable time within which the Tax Commission must make an audit adjustment such as the one being questioned in this protest. There is no waiver of the Tax Commission's right to action so long as the audit adjustment is brought within the statutory period.

In addition, there is no evidence that the taxpayer has reasonably relied on any perceived acquiescence to his detriment. The taxpayer's claim for equitable relief from paying his Idaho income tax is denied.

The petitioner also, from time to time, submitted documentation to aid in the determination of the proper taxable income for 1999.

¹ There is some question in Idaho whether estoppel will ever apply to a government agency in the circumstances presented in this protest. See Willig v. State of Idaho, Dept. of Health and Welfare, 127 Idaho 259, 899 P.2d 969 (1995), where the Idaho Supreme Court purposely declined to rule on the applicability of estoppel as applied against a state agency operating within its "governmental" function. Compare Willig with Hubbard v. Canyon County Commissioners, 106 Idaho 436 (1984) and State v. Adams, 90 Idaho 195 (1965).

The petitioner submitted a substantial volume of paper as authority for his position. In reviewing this material, the Commission may have overlooked one or more of his various tax protester arguments. In Pabon *supra*, the Tax Court addressed the various tax protestor arguments as follows:

We see no need to catalog petitioner's contentions and painstakingly address them. We have dealt with many of them before. E.g., Nieman v. Commissioner, T.C.Memo. 1993-533; Solomon v. Commissioner, T.C.Memo. 1993-509. Moreover, as the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir.1984), affg. per curiam an unreported Order of this Court.

The petitioner has provided some additional information regarding his income and deductions but has not provided all of the information necessary to be certain that the liability is properly computed. From the information available, the Tax Commission has attempted to compute the liability of the petitioner.

There are a few issues in the computation of the petitioner's taxable income for 2000 which need to be addressed. The petitioner claimed a loss from [Redacted] and submitted a document to support his position. On that document, it appeared that the name of the holder of the account had been removed and the petitioner's name substituted for that of the holder of the account. The Commission finds that the petitioner has failed to carry his burden of proof with regard to this claimed loss.

[Redacted] issued the petitioner two 1099s indicating that early distributions had been made to him in the total amount of \$13,756 for the year 2000. The petitioner contends that this was actually a rollover of the account. However, no documentation

has been submitted to clearly show that a qualifying rollover was made. Therefore, the Commission finds that this amount is includable in the computation of Idaho taxable income.

The petitioner claimed that he incurred a loss from the operation of a business in 2000. However, he failed to file a Schedule C showing the income and deductions for this activity. Further, he failed to submit sufficient information to allow the Commission staff to determine whether a business actually existed or the nature of the activity. Therefore, the Commission finds that the petitioner has failed to carry his burden of proof establishing that he is entitled to this loss.

The petitioner claimed head of household status for both of the years here in question. Based upon the information in the file, the Commission finds that the petitioner is entitled to such status for 1999, but not for 2000.

WHEREFORE, the Notice of Deficiency Determination dated April 22, 2003, is hereby MODIFIED, and as so modified is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest (calculated to June 15, 2004):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$ 202	\$ 51	\$ 57	\$ 310
2000	572	143	117	<u>832</u>
			TOTAL DUE	<u>\$1,142</u>

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

An explanation of the petitioner' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]
