

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 17631
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
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	)	

On July 3, 2003, the staff of the Tax Discovery Bureau (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 1999 through 2001 in the total amount of \$22,628.

On August 21, 2003, the Bureau received timely notice that the taxpayer did not agree with the Notice of Deficiency Determination. The taxpayer did not request a hearing, but did provide the Tax Commission with additional information to consider in its redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

The Bureau received information from the Internal Revenue Service (IRS) that showed the taxpayer had sufficient income to file federal income tax returns but that he failed to do so. The Bureau researched the Tax Commission's records and found that the taxpayer did not file income tax returns with the state of Idaho either. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho income tax returns. The taxpayer responded that he was confused and that he did not live in Idaho.

The Bureau obtained additional information from [Redacted] other third-party sources that showed the taxpayer had ties or connections with Idaho in 1999 through 2001. The Bureau determined the taxpayer was required to file Idaho income tax returns. The Bureau prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer's initial response to the Notice of Deficiency Determination was that he did "not understand specifically and clearly" what it was referencing. He said he was not a lawyer. The taxpayer stated he should be able to have a complete answer to the Bureau's letter within 90 days. The taxpayer did follow up his response within the 90 days with a 212 page letter/document questioning just about every line and word in the Notice of Deficiency Determination. The taxpayer eventually came to his point that he disagreed with the Bureau's determination because he believed he did not have income that was from a taxable source as provided in the Internal Revenue Code.

The Bureau recognized the taxpayer's argument as one akin to those of the tax protestor movements. Therefore, the Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter giving him two alternative methods for redetermining the Notice of Deficiency Determination. The taxpayer responded that his intent was to provide additional statements, documents, or materials. However, he needed to ascertain the breadth and scope of the State Tax Commission's verified knowledge of all the facts and accuracy of the figures.

The taxpayer requested copies of the information the Tax Commission used in making its determination. The Tax Commission complied with the taxpayer's request. The taxpayer responded that he would need additional time to put his documentation together because he had not seen the Tax Commission's information before. He stated it would take him time to get all the definitions of the words and decode the substantial encoded information.

The Tax Commission allowed the taxpayer additional time to provide the material he wanted the Tax Commission to consider. The taxpayer did provide a substantial amount of information, 800 – 900 pages, which the Tax Commission reviewed. If the Tax Commission was

to decide the matter based upon the sheer volume of paper or information provided, the taxpayer's position would be easily upheld. However, the Tax Commission's decision is based upon the law and the facts as presented, and in this case the taxpayer has failed to persuade the Tax Commission.

After wading through the reams of paper, the Tax Commission found the taxpayer's primary argument. The taxpayer believes he had no sources of income [Redacted] The taxpayer claims that only certain individuals and only certain sources of income are taxable. The taxpayer believes that only income derived from specific sources, as listed in the Code of Federal Regulations, are sources within the United States and therefore taxable. Since the taxpayer had no income from the identified sources, he had no taxable sources of income.

The Tax Commission views the source of income argument as a misinterpretation of the IRC. Section 861 of the IRC is for guidance in determining whether income is from sources within the United States or without the United States in the determination of the taxable income of non-U.S. citizens, nonresident aliens, and foreign corporations. Regulation 1.861-1(a) states in part, "[T]hese sections explicitly allocate certain important sources of income to the United States or to areas outside the United States, . . ." The regulation goes on to say, "[T]he rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections." The operative sections referred to are for the determination of whether income is sourced within or outside the United States in order to compute other provisions of the IRC, i.e. foreign tax credit, DISC and FSC income, etc.

When faced with individuals arguing they have no sources of income within the United States, the courts have stated,

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. Sec. 1.1-1(a)(1), Income Tax Regs.; see *Habersham-Bey v. Commissioner*, 78 T.C. 304, 309 (1982).

Under section 61(a)(1) and (4), petitioner clearly is required to include his wages, tokens, and interest in gross income. It is well established that compensation for services, in whatever form received, is includable in gross income . . . Petitioner is liable for Federal income taxes on the wages, tokens, and interest he received during 1991. *Aiello v. Commissioner*, T.C. Memo. 1995-40.

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, or 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.

In his petition, petitioner contends that respondent erred in determining the deficiencies and additions to tax because 'All income received by Petitioner for the tax years in question is/was untaxable 'earned income' as defined in I.R.C. Section 911(d)(2)(A).' At the hearing on respondent's Motion For Summary Judgment, petitioner also claimed that 'all of my gross income was received without the United States as defined in Subchapter N of 26 CFR 1.861-1', and 'I am not a citizen of the federal U.S. I make a living in the state of Illinois as a right, and I am not subject to the jurisdiction of the federal United States.'

We find no support for petitioner's position in the authorities he cites. Section 911(d)(2)(A) provides a definition of "earned income" for purposes of section 911. Section 911(a) allows an

exclusion from gross income for foreign earned income at the election of a qualified individual, defined as an individual whose tax home is in a foreign country. Sec. 911(d)(1). Petitioner had no foreign earned income and is not a qualified individual for purposes of section 911. Similarly, petitioner's position is not bolstered by the regulations under section 861. To the contrary, section 861(a)(1) and (3) provides that interest from the United States and compensation for labor or personal services performed in the United States (with exceptions not applicable here) are items of gross income which shall be treated as income from sources within the United States.

Section 1 imposes an income tax on the income of every individual who is a citizen or resident of the United States. During the years at issue petitioner resided in Illinois and therefore was a resident of the United States and subject to tax under section 1. A Federal income tax return must be filed by all individuals receiving gross income in excess of certain minimum amounts. Sec. 6012; sec. 1.6012-1(a), Income Tax Regs. Petitioner's gross income in each year exceeds the minimum amount. In short, petitioner is a taxpayer subject to the Federal income tax laws. Solomon v. Commissioner, T.C. Memo 1993-509.

As a citizen of the United States during the years at issue, petitioner is subject to United States Federal income tax on his worldwide income. Sec. 1; Cook v. Tait, 265 U.S. 47 (1924); sec 1.1- 1(a)(1) and (c), Income Tax Regs. It is unnecessary to determine whether that income was from sources within or without the United States since petitioner is not a nonresident alien. See sec. 861." Dacey v. Commissioner, T.C. Memo 1992-187.

The underlying fact is that the taxpayer is a U.S. citizen, and he resided in the United States in 1999 through 2001. Therefore the taxpayer is subject to tax on his worldwide income. Regardless, as an Idaho resident, the taxpayer is required to report to Idaho his income from whatever source derived. (Idaho Code section 63-3002) The taxpayer has not shown he was domiciled somewhere other than Idaho during the years in question. Domicile itself affords a basis for a state's individual income tax. 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 taxpayer received nonemployee compensation in each of the years in question. Compensation for services is income and is included in taxable income. (IRC section 61) The taxpayer has provided nothing that convinces the Tax Commission his income was excluded from federal taxable income and therefore excluded from Idaho taxable income. The argument the taxpayer presented was just another variation of tax protestor rhetoric that has been dismissed by the courts and the IRS.

The Tax Commission finds the returns the Bureau prepared to be a fair representation of the taxpayer's taxable income for the years in question. 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 Commission, 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 has failed to meet this burden, the Tax Commission upholds the Bureau's determination.

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

WHEREFORE, the Notice of Deficiency Determination dated July 3, 2003, is hereby 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>
1999	\$10,383	\$2,596	\$3,138	\$16,117
2000	4,166	1,042	926	6,134
2001	940	235	136	<u>1,311</u>
			TOTAL DUE	<u>\$23,562</u>

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

An explanation of the taxpayer's rights 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]

Receipt No.  
\_\_\_\_\_