

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17868
[REDACTED])	
Petitioners.)	DECISION
)	
)	

On September 29, 2004, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted](Petitioners), asserting income tax, penalty, and interest in the amount of \$8,244 for the 2000 and 2001 taxable years. The notice advised the Petitioners that, if they disagreed with the deficiency determined by the Bureau, they could petition the Tax Commission for a redetermination.

The Petitioners timely filed a letter of protest titled “Disclosure Requests” that the Commission treated as a petition for redetermination. In letters dated March 22, 2004, and May 11, 2004, the Commission notified the Petitioners that they could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the Bureau, or, in the alternative, submit additional information to show why the deficiency should be redetermined. The Petitioners responded to these letters with tax protestor rhetoric regarding the state’s authority to tax under Internal Revenue Code §861. The Petitioners did not submit any additional information for the Tax Commission to consider.

This decision is based on the information contained in the Commission’s files. The Commission has reviewed the files, is advised of their contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau with interest updated through December 31, 2004.

This is a nonfiler case. The Petitioners live in Idaho and did not file Idaho individual income tax returns for the 2000 and 2001 taxable years. Based on information obtained by the Tax Commission's income tax business specialist, it appeared that the Petitioners had an Idaho income tax filing requirement. Information received from W-2s and private bank accounts of the Petitioners shows the Petitioners received income of approximately \$52,696 during the 2000 taxable year and \$65,626 during the 2001 taxable year.

Based on the W-2 information and private bank account information, the Tax Discovery Bureau prepared provisional returns for the Petitioners. The Bureau provided the Petitioners with personal deductions and exemptions and grocery credits. Once completed, the provisional returns showed a tax deficiency existed for each of the years at issue. The Bureau then issued a Notice of Deficiency Determination which included a description of the information relied upon, a copy of the provisional returns, a document showing the calculation of interest, and an explanation of the Petitioners' right to request a redetermination of the deficiency.

The Petitioner responded to the Notice of Deficiency Determination by sending a Disclosure Request letter asking for documents that disclose the state's authority to withhold personal income tax under the Uniform Commercial Code (UCC). The Petitioners have sent correspondence asserting that the income from their business, [Redacted], cannot be taxed because it is in a "Pure Trust." Most recently, the Petitioners have responded to the hearing rights letter of March 22, 2001, with standard tax protestor arguments regarding their requirement to file federal and state income tax returns under Internal Revenue Code §861.

State and federal courts have rejected these common tax protestor themes time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned,

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. “Tax protesters” have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The Petitioners assert some of the same arguments discussed by Judge Easterbrook. They believe their tax obligation has somehow been eliminated despite the fact that they live and earn a living in Idaho.

Based on their correspondence and a selective reading of I.R.C. §861, the Petitioners apparently believe that their income is not subject to state or federal taxation. The courts have universally rejected the argument that IRC § 861 exempts all income from taxation other than income earned from a foreign source. Section 861 and its regulations make clear that the statute and regulations were enacted to deal with the problems of calculating the taxable incomes of nonresident aliens or taxpayers with incomes from sources outside of the United States for which special provisions apply. Section 861 is in part I of subchapter N of the Internal Revenue Code. Part I is titled “Source Rules and Other General Rules Relating to Foreign Income.” The Tax Commission will not address the Petitioners’ §861 argument any further. To do so might suggest that the Petitioners’ argument has some colorable merit, which the courts have determined it does not.

To the extent that the Petitioners believe the Uniform Commercial Code governs state tax agencies, their belief is mistaken. Idaho law and not the Uniform Commercial Code governs matters concerning Idaho’s individual income tax. The United State Supreme Court has long recognized that the right to tax is a crucial attribute of state sovereignty. *M’Culloch v. Maryland*, 17 U.S. 316, 428 (1819). “The power to tax rests solely with the legislature, and is subject only to constitutional limitations.” *Richey v. Indiana Dept. of State Revenue*, 634 N.E.2d 1375, 1376 (Ind. Tax Ct. 1994).

The Idaho legislature authorized the Commission to issue a Notice of Deficiency Determination to taxpayers who have not met their Idaho individual income tax filing and payment obligations. Idaho Code § 63-3045.

The Uniform Commercial Code applies only to commercial transactions; it has no bearing on a determination of tax matters. Therefore, the Tax Commission finds the UCC argument inapplicable to the matter at hand.

To the extent that the Petitioners believe that they have set up a legitimate non-taxable entity called a “Pure Trust,” the trust is not recognized by state or federal law. Like many other anti-government, anti-authority individuals, the Petitioners have apparently been scammed into believing they have set up a legitimate nontaxable entity. In support of their position, the Petitioners have supplied the Tax Commission with a copy of the much popular and circulated letter from the IRS saying that “Pure Trusts” do not have tax requirements. The IRS does not recognize the “Pure Trust” as a legitimate trust and such arrangements provide no tax relief. *See* IRS Notice 97-24. Thus, the Tax Commission will ignore the “Pure Trust” and hold the Petitioners responsible for the tax on the income from [Redacted].

The threshold amount for a married couple filing a joint return was \$12,950 for the 2000 taxable year and \$13,400 for the 2001 taxable year. The Petitioners’ gross income was at least \$52,696 for 2000 and \$65,626 for 2001, which is well in excess of the statutory threshold income amounts that trigger a married couple’s choice to file a joint Idaho income tax return with his or her spouse.

Persons who are required to file an Idaho individual income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. In the event a person fails to file a tax return or to pay the proper amount of individual income tax, Idaho law

specifically provides the Commission with the authority to issue a Notice of Deficiency Determination.

63-3045. Notice of redetermination or deficiency – Interest. –

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer

It is well settled in Idaho that provisional returns determined by the Idaho State Tax Commission are 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 Petitioner to show that the tax deficiency is erroneous. *Id.* The Petitioners have failed to show that the provisional returns prepared by the Tax Commission are incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the Petitioners' taxable income for the taxable years in question and that the amounts shown due on the Notice of Deficiency Determination are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated September 29, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioners pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$ 2,576	\$644	\$610	\$ 3,830
2001	3,393	848	542	<u>4,783</u>
TOTAL DUE				<u>\$ 8,613</u>

Interest is calculated through December 31, 2004, and will continue to accrue until paid.

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

An explanation of the Petitioners' 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]
[REDACTED]
[REDACTED]

Receipt No.
