

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 18380
)
Petitioners.) DECISION
)
_____)

On October 4, 2004, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income taxes, penalties, and interest for the taxable years 1999 through 2002 in the total amount of \$16,387.

On October 12, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing and have provided only a statement saying the Tax Commission’s letter was “refused for cause U.C.C. 3-501.” The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information [Redacted] that the taxpayers received income and that they had an Idaho address. The Bureau researched the Tax Commission’s records and found the taxpayers did not file Idaho income tax returns for the taxable years 1998 through 2002. The Bureau sent the taxpayers a letter asking about their requirement to file Idaho income tax returns. The taxpayers responded with a lengthy letter discussing their belief and position for not filing income tax returns.

The taxpayers stated that Idaho Code section 63-3030 provided that Idaho state tax returns are only required by residents who have a federal filing requirement. They said if one does not have gross income as reflected on a federal income tax return as defined in the Internal Revenue Code (IRC), one would be unable to file an Idaho income tax return. The taxpayers

stated there is no section or sections of the IRC that makes them liable for an income tax, and they have found no Idaho statute which makes them liable for either a federal income tax or a state income tax. They stated that, while Idaho Code section 63-3024 imposes a state income tax, there is no corresponding state statute that makes one liable for an income tax.

The taxpayers said that IRC section 61 lists a variety of sources from which income may arise, but it does not list or define gross income. Since Idaho Code section 63-3011 defines gross income to mean gross income as defined in section 61(a) of the IRC, Idaho has also not defined gross income but only sources of income. The taxpayers go on to say that gross income is not defined in the statutes but that IRC section 64 describes what is ordinary income. From this they reasoned that income is the gain from the sale or exchange of property. They stated that compensation for services is a source or capital used to create the gain, not the gain itself.

In addition to these arguments, the taxpayers added the argument that the 16th Amendment to the U.S. Constitution was not ratified by three-fourths of the states. Therefore, the 16th Amendment has not been adopted and as a result there are no federal income tax laws and consequently no Idaho state income tax laws.

The Bureau recognized the taxpayers' arguments as those of various tax protestor movements. The Bureau reviewed the available information and determined the taxpayers were required to file Idaho income tax returns for the taxable years 1998 through 2002. The Bureau prepared returns for the taxpayers and sent them a Notice of Deficiency Determination. The taxpayers protested the Bureau's determination saying they had no federal taxes due and therefore no Idaho taxes were due. They stated that [Redacted] moved to Idaho in November 1998 and that [Redacted] moved to Idaho in January 1999. [Redacted] stated he was retired and

never worked a day for money in Idaho. The taxpayers also provided a copy of the earlier letter sent to the Bureau.

The Bureau reviewed the information the taxpayers provided and determined they were not required to file an Idaho income tax return for 1998. The Bureau cancelled the Notice of Deficiency Determination as it related to the tax year 1998. The Bureau acknowledged the taxpayers' protest and referred the matter for administrative review.

The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers responded to the Tax Commission's letter with a statement titled "REFUSED FOR CAUSE U.C.C. 3-501." The statement contained language such as this is not a true bill of commerce; it is an unattested, unsigned and incomplete instrument; you are inducing by fraud; there was no consideration or performance for which they are indebted; they received no earned income from wages, salaries, professional fees, tips, etc, as the terms and phrases are defined in 26 USC, 26 CFR and the Public Salary Act of 1939; the 16th Amendment was never lawfully ratified; and they were not required to file a 1040 or state tax form. The statement closed with a statement that all rights were reserved and cited U.C.C. 1-207. Based upon the correspondence sent by the taxpayers, the Tax Commission decided to issue its decision with the information available.

The taxpayers argued they were not required to file Idaho income tax returns because they were not required to file federal returns. The taxpayers cited Idaho Code section 63-3030(a)(1) which states that every resident individual required to file a federal return under section 6012(a)(1) of the IRC is required to file an Idaho return. Since they were not required to file a federal return, they were not required to file an Idaho return.

The taxpayers argued that they are not liable for the federal income tax. The Tax Commission disagrees. The taxpayers are missing a critical point. Idaho Code section 63-3030 references IRC section 6012(a)(1) for setting the thresholds for filing an Idaho income tax return. Section 63-3030 states that every resident individual required to file a federal return under section 6012(a)(1) of the IRC is required to file an Idaho return. IRC section 6012(a)(1) states that every individual having gross income in excess of the exemption amount is required to file a federal return. Therefore, for Idaho purposes, every individual having gross income in excess of the exemption amount is required to file an Idaho return. Regardless of whether the taxpayers believe they were not required to file federal returns, they are required to file Idaho returns if they received income in excess of the threshold amounts.

The taxpayers stated that no section of the IRC makes them liable for an income tax. The taxpayers cited the privacy act notice and IRC sections 6001, 6011, and 6012 as supporting their contention that one must be made liable for a tax. The taxpayers stated that sections 6001 and 6011 require everyone be made liable to file a return; however, no section exists which makes one liable for an income tax. 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 – . . .

In In Re: Peter Kay Stern, 114 F.3d 1177 (4th Cir. 1997), the court 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."

Additionally, the court in Solomon v. Commissioner, T.C. Memo 1993-509 (1993), stated,

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.

Therefore, since IRC section 1 imposes a tax on the taxable income of every individual, if the taxpayers had taxable income, they were 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 taxpayers argued that IRC section 6012, and hence Idaho Code section 63-3030, is dependent on the existence of taxable gross income; however, gross income is not defined. IRC section 61 lists a variety of sources but does not list or define gross income. IRC section 61 states, “gross income means all income from whatever source derived” and then it goes on to list the sources. The taxpayers claim that compensation for services is a source of income and not gross income.

In relation to a discussion of sources of income within the United States, the courts have stated,

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.

The taxpayers claimed that they had no gross income. However, the Bureau found that the taxpayers received W-2 wages, interest, dividends, income from the sale of stocks and bonds, and pension or retirement income. The taxpayers argue that these are sources of income and not

income themselves. The taxpayers stated that income is not defined in the IRC; that the closest the IRC comes to defining income is when it describes ordinary income in section 64 as the gain from the sale or exchange of property. The taxpayers stated the U.S. Supreme Court provided a constitutional definition of income based on the 16th Amendment that income may be defined as the gain derived from capital, from labor, or from both combined, provided it include profit gained through a sale or conversion of capital assets. The taxpayers continued with analysis of court cases generally cited to support that wages, salaries and compensation for labor are taxable income that they claim are consistently misapplied, misinterpreted or simply poorly decided.

The Tax Commission finds this argument without merit. In Holt v. New Mexico Department of Taxation & Revenue, 59 P.3d 491 (2002), the Supreme Court of New Mexico stated,

The taxpayers do not cite any on point cases for their claim that an individual's employment wages are not subject to income tax. We do not find such authority. *See, e.g., United States v. Connor*, 898 F.2d 942, 943 (3rd Cir.1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income."); *Hill v. United States*, 599 F.Supp. 118, 121 (M.D.Tenn.1984) ("[N]o Court of the land has ever held or suggested that the Congress could not tax constitutionally wages as income."); *Combs*, 14 P.3d at 586 (holding that wages are taxable income and stating that the court "discovered no federal administrative or judicial authority to the contrary").

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. Buras, 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 taxpayers argued that Idaho tax law is absolutely dependent upon federal law and the federal tax statutes derive their authority from the 16th Amendment. The taxpayers claim that the 16th Amendment was not ratified by the required number of states. Therefore, the amendment was not adopted; and, as a result, there are no federal tax laws and hence no Idaho income tax laws that apply to them.

The argument that the 16th Amendment was not ratified was addressed by the court in U.S. v. Thomas, 788 F.2d 1250 (7th Cir. 1986), cert. den. 107 S.Ct. 187 (1986). The court stated,

Thomas is a tax protester, and one of his arguments is that he did not need to file tax returns because the sixteenth amendment is not part of the constitution. It was not properly ratified, Thomas insists, repeating the argument of W. Benson & M. Beckman, *The Law That Never Was* (1985). Benson and Beckman review the documents concerning the states' ratification of the sixteenth amendment and conclude that only four states ratified the sixteenth amendment; they insist that the official promulgation of that amendment by Secretary of State Knox in 1913 is therefore void.

Benson and Beckman did not discover anything; they rediscovered something that Secretary Knox considered in 1913. Thirty-eight states ratified the sixteenth amendment, and thirty-seven sent formal instruments of ratification to the Secretary of State. (Minnesota notified the Secretary orally, and additional states ratified later; we consider only those Secretary Knox considered.) Only four instruments repeat the language of the sixteenth amendment exactly as Congress approved it. The others contain errors of diction, capitalization, punctuation, and spelling. The text Congress transmitted to the states was: "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." Many of the instruments neglected to capitalize "States," and some capitalized other words instead. The instrument from Illinois had "remuneration" in place of "enumeration"; the instrument from Missouri substituted "levy" for "lay"; the instrument from Washington had "income" not "incomes"; others made similar blunders.

Thomas insists that because the states did not approve exactly the same text, the amendment did not go into effect. Secretary Knox considered this argument. The Solicitor of the Department of State drew up a list of the errors in the instruments and--taking into account both the triviality of the deviations and the treatment of earlier amendments that had experienced more substantial problems--advised the Secretary that he was authorized to declare the amendment adopted. The Secretary did so.

Although Thomas urges us to take the view of several state courts that only agreement on the literal text may make a legal document effective, the Supreme Court follows the "enrolled bill rule." If a legislative document is authenticated in regular form by the appropriate officials, the court treats that document as properly adopted. *Field v. Clark*, 143 U.S. 649, 36 L.Ed. 294, 12 S.Ct. 495 (1892). The principle is equally applicable to constitutional amendments. See *Leser v. Garnett*, 258 U.S. 130, 66 L.Ed. 505, 42 S.Ct. 217 (1922), which treats as conclusive the declaration of the Secretary of State that the nineteenth amendment had been adopted. In *United States v. Foster*, 789 F.2d. 457, 462-463, n.6 (7th Cir. 1986), we relied on *Leser*, as well as the inconsequential nature of the objections in the face of the 73-year acceptance of the effectiveness of the sixteenth amendment, to reject a claim similar to Thomas's. See also *Coleman v. Miller*, 307 U.S. 433, 83 L. Ed. 1385, 59 S. Ct. 972 (1939) (questions about ratification of amendments may be nonjusticiable). Secretary Knox declared that enough states had ratified the sixteenth amendment. The Secretary's decision is not transparently defective. We need not decide when, if ever, such a decision may be reviewed in order to know that Secretary Knox's decision is now beyond review.

Consequently, the federal tax laws do apply to the taxpayers; but, even more important, the taxpayers as residents of Idaho fall under the purview of the Idaho Constitution and the Idaho legislature's intent and purposes of the Idaho Income Tax Act. See Idaho Code section 63-3002;

Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221 (1920); Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

The taxpayers referenced the Uniform Commercial Code (UCC) regarding the manner in which the Tax Commission presented its Notice of Deficiency Determination and its letter regarding the taxpayers' hearing rights. The taxpayers' references to the UCC suggest the state of Idaho must conform to the UCC in its dealings with taxpayers. However, Idaho Code section 28-1-102 sets out the purpose of the UCC. It states in pertinent part:

Purposes - Rules of construction - Variation by Agreement.- (1)

This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions. (Emphasis added.)

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

The arguments presented by the taxpayers did not persuade the Tax Commission that they did not have an obligation to file Idaho income tax returns or that they did not have any taxable income. Furthermore, the taxpayers have provided no documentation or information that would show the returns prepared by the Bureau were incorrect. 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

taxpayers to show that the tax deficiency is erroneous. Id. Since the taxpayers have failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is correct. The Bureau also added interest and penalty to the taxpayers' tax deficiency. The Tax Commission finds those additions appropriate as provided for in Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency of Deficiency Determination dated October 4, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

YEAR	TAX	PENALTY	INTEREST	TOTAL
1999	\$ 932	\$ 233	\$ 344	\$ 1,509
2000	2,752	688	797	4,237
2001	5,302	1,326	1,127	7,755
2002	2,524	631	374	<u>3,529</u>
			TOTAL DUE	<u>\$ 17,030</u>

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

An explanation of the taxpayers' right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, 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.
