

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18733
[Redacted])	
Petitioner.)	DECISION
)	
)	

On March 25, 2005, the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted](Petitioner), asserting income tax, penalty, and interest in the amount of \$5,793 for the 2000 through 2003 taxable years. The Notice advised the Petitioner that, if he disagreed with the deficiency determined by the Bureau, he could petition the Tax Commission for a redetermination.

On March 29, 2005, the Petitioner timely filed an appeal and petition for redetermination. The Petitioner specifically stated that he did not want a hearing in front of a Commissioner. He did not submit additional information for the Tax Commission to consider. Therefore, this decision is based on the information contained in the Tax Commission's files. For the reasons set forth below, the Tax Commission affirms the deficiency with interest updated through August 31, 2005.

I. FACTS

The Petitioner is an Idaho resident and has not filed Idaho income tax returns for the 2000 through 2002 taxable years. Petitioner submitted a 2003 return but did not sign the return. Thus, the return was not considered filed and was included in the Notice of Deficiency. Based on information obtained by the Tax Discovery Bureau of the Idaho State Tax Commission, it appeared that the Petitioner had an Idaho income tax filing requirement for the years in question. Information [Redacted] shows that the Petitioner received income of approximately \$26,473 during the 2000

taxable year, \$28,700 during the 2001 taxable year, \$27,587 during the 2002 taxable year, and \$10,679 during the 2003 taxable year.

Based on the [Redacted] information, the Tax Discovery Bureau prepared provisional returns for the Petitioner. The Bureau provided the Petitioner 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 Petitioner's right to request a redetermination of the deficiency.

The Petitioner sent a letter of protest in response to the Notice of Deficiency Determination but did not request an informal conference. Petitioner provided several copies of correspondence that he had submitted to [Redacted] the [Redacted] Franchise Board outlining his belief that he did not have to file income tax returns. Based on this correspondence, it appears that Petitioner holds a mistaken belief that the federal and state income tax is voluntary and does not require him to file. Petitioner stated that he is prepared to present the legal evidence supporting his position to a jury of his peers in a court of law.

II. ANALYSIS

Although Petitioner does not ask for a response from the Tax Commission as to his inquiries to other taxing authorities, the Tax Commission will respond to those inquiries as they apply to his Idaho income tax responsibility. The Tax Commission notes that Petitioner has asked other authorities to respond to his inquiries under Rule 36 of the Federal Rules of Civil Procedure. Although Petitioner does not make the same inquiry of the Tax Commission, the Commission notes that Rule 36 of the Federal Rules of Civil Procedure applies to requests for admissions when there is

a pending court action. Rule 36 has no application outside of the discovery process in litigation. Petitioner's protest with the Idaho State Tax Commission does not fall within the bounds of the Federal Rules of Civil Procedure or the Idaho Rules of Civil Procedure. Moreover, the Idaho State Tax Commission does not commence any lawsuit based on its Decisions. Thus, whether a lawsuit is filed in this case and presented to a jury is solely up to the Petitioner.¹

Petitioner is in the midst of the civil administrative process which allows for collection of taxes through liens, levies, and seizures of property. Under Idaho Code §63-3045(2), the informal hearing to which Petitioner has not availed himself is Petitioner's right to be heard in this matter and satisfies constitutional due process.

The Petitioner argues that an income tax on wages is voluntary and, if the state makes a tax on wages mandatory, a court must decide whether the tax should be paid. Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts to be income that is subject to the income tax laws. *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981). Furthermore, the requirement to pay taxes is not voluntary. Internal Revenue Code § 6012 makes clear that only individuals whose income falls below a specified level do not have to file returns. The federal tax system is based on self-assessment and reporting; compliance with the tax laws is mandatory. IRS Publication 2105 (2003). The act of filing a return and paying taxes is voluntary only in the sense that nobody is forcing one to act. The law provides for serious civil and criminal penalties should one fail to act when required.

The requirement to file state income tax returns is also not voluntary. Idaho Code §63-3024 provides that a tax measured by taxable income as defined in Title 63, Chapter 30 of the Idaho Code is imposed on every individual required to file an Idaho return. Idaho Code § 63-3030 requires any

1. Per Idaho Code §63-3049(b), Petitioner is required to deposit 20% of his tax liability in order to appeal the Tax

Idaho resident with gross income greater than the federal exemption amount to file an Idaho individual income tax return. Petitioner had income in excess of the threshold limits for 2000 through 2003 and, therefore, was required to file individual income tax returns for the years in question.

Petitioner mentions that tax avoidance is legal. The Tax Commission recognizes the right of taxpayers to minimize their tax burden by all legal means. Tax avoidance means taking advantage of all deductions, credits, etc. allowed by the Internal Revenue Code and the Idaho Code. While tax avoidance is legal, tax evasion is not. What Petitioner advocates is tax evasion—evading paying taxes altogether. Petitioner cites the Vernice Kuglin case in support of his position. See *Kuglin v. C.I.R.*, T.C. Memo 2002-51. A Tennessee jury acquitted Kuglin, a FedEx pilot, of six counts of felony tax evasion and willful failure to file federal tax returns. American Bar Association Section of Taxation News Quarterly, *The Tax Protest Movement: Past, Present, and Future*, Winter 2004, p.14. The Kuglin case is hailed as a victory by tax protesters. However, even though the federal government lost the case for criminal tax evasion, it still could collect the taxes through the civil (non-criminal) process. Petitioner is in the midst of the civil administrative process with the Idaho State Tax Commission. No criminal charges have been filed against the Petitioner. However, collection of the taxes that the Petitioner owes the State of Idaho will take place through the civil administrative process unless Petitioner chooses to pay 20% of his potential tax liability and proceed to court.

While Vernice Kuglin won her criminal case, the majority of tax protester cases are civil cases and ones which the government rarely loses. The United States Tax Court noted “...this Court has been flooded with a large number of so-called tax protester cases in which thoroughly meritless

Commission’s Decision to the Board of Tax Appeals or to the District Court.

issues have been raised in, at best, misguided reliance upon lofty principles. Such cases tend to disrupt the orderly conduct of serious litigation in this Court, and the issues raised therein are of the type that have been consistently decided against such protesters and their contentions often characterized as frivolous.” *McCoy v. Comm’r*, 76 T.C. 1027,1029 (1981).

Petitioner seems to have fallen prey to the propaganda of various tax protesting groups. The arguments set forth by Petitioner are not new and have long been settled by the courts. Petitioner is a resident of the state of Idaho who has gross income in excess of the minimum filing amounts for the years in question. Therefore, Petitioner is required under Idaho’s income tax laws to report and pay taxes on his income. Idaho Code §§ 63-3024 and 63-3030(a)(1). In addition, the fact that Petitioner is a resident of Idaho is sufficient to confer jurisdiction over him for purposes of Idaho individual income taxation. Domicile itself affords a basis for income taxation. *New York ex rel Cohn v. Graves*, 300 U.S. 308, 312-13 (1937). Enjoyment of the privileges of residency in the state and the attendant right to invoke the protections of its laws are inseparable from responsibility for sharing the costs of government. *Id.* at 313.

Petitioner has put various individuals at the Tax Commission on notice for violations of 18 U.S.C. 241 and 242. These statutes are known as the civil rights statutes and were enacted in the Reconstruction era which is the period in history which produced the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution. *United States v. Price*, 383 U.S. 787, 789 (1966). Although §§ 241 and 242 are usually invoked when there is abusive police conduct, the Tax Commission’s willful deprivation of Petitioner’s due process rights would also serve as the potential basis of a § 241 or §242 claim. To establish a violation of §241, the Petitioner would have to prove that Tax Commission employees conspired together to injure, oppress, threaten, or intimidate the Petitioner for the purpose of interfering with his due process rights. *Green, Saul, Michigan’s*

Aggressive Effort to End Hate Crime Violations through Community Partnerships, 80 Mich. B.J. 58, 62 (2001). The redetermination process in Idaho Code §§ 63-3044 through 63-3049 satisfies Petitioner’s constitutional due process. *Parsons v. Idaho State Tax Comm’n*, 110 Idaho 572, 576 (Ct. App. 1986).

The Petitioner has provided no information to rebut the presumption that the provisional returns prepared by the Tax Commission are correct. *Parsons v. Idaho State Tax Comm’n*, 110 Idaho 572, 574 n.2 (Ct. App. 1986). Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the Petitioner’s taxable income for 2000, 2001, 2002 and 2003.

III. DECISION

WHEREFORE, the Notice of Deficiency Determination dated December 14, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following taxes, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$1,303	\$326	\$ 361	\$ 1,990
2001	\$1,381	\$345	\$ 276	\$ 2,002
2002	\$1,274	\$319	\$ 173	\$ 1,766
2003	\$ 75	\$ 19	\$ 6	\$ 100
			TOTAL DUE	<u>\$ 5,858</u>

Interest is calculated through August 31, 2005, and will continue to accrue until paid.

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 _____, 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]

Receipt No.
