

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 18818
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On April 12, 2005, the staff of the Tax Discovery 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 2001 through 2003 in the total amount of \$3,596.

On May 18, 2005, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested a hearing which was held August 15, 2005. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information [Redacted] that showed the taxpayer's husband received wages in excess of the amount required to file Idaho income tax returns. Because of the community property laws of the state of Idaho, the Bureau contacted the taxpayer and asked her about her filing requirement. The taxpayer responded that she was both not required to file and was uncertain about her filing requirements. She completed a questionnaire that showed she was an Idaho resident for all three years and that her husband was employed by an Idaho trucking company. In a statement attached to the questionnaire, the taxpayer said she made an inquiry of the Tax Commission regarding a statement in the Tax Commission's forms and instruction booklet but had not received a response. Her question was regarding the Tax Commission's statement that, "If you are required to file federal income tax returns, you must file an Idaho return." The taxpayer wanted to know where this was in the law. Copies of this inquiry were sent to Idaho's Attorney

General and the Idaho Supreme Court. The taxpayer stated that the Supreme Court was the only one that replied, and they said there was no such law on the books. The taxpayer asked what that statement means to the relationship between federal and state income tax returns.

The Bureau identified the taxpayer's inquiry as one similar to what tax protestors present, so the Bureau reviewed the information available and determined the taxpayer was required to file Idaho individual income tax returns. The Bureau prepared returns for the taxpayer and sent her a Notice of Deficiency Determination. The taxpayer's response was to protest the Bureau's determination. The taxpayer still questioned her requirement to file Idaho income tax returns citing Idaho Code section 63-3030 and its reference to Internal Revenue Code (IRC) section 6012(a)(1). She said that she was not required to file federal returns so she must not be required to file Idaho returns. The taxpayer also provided information on the "Victory Tax" and stated that the repeal of the victory tax made the income tax voluntary.

The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter giving her two options for having the Notice of Deficiency Determination redetermined. The taxpayer requested a hearing, which was held at the Tax Commission's office in Boise, Idaho and attended by the taxpayer, her husband, and [Redacted] (Tax Policy Specialist). During the hearing the taxpayer stated she had a class action suit filed against the IRS, an administrative claim for damages. She stated she has been fighting with the IRS for over 10 years and has yet to receive anything from them. The taxpayer stated the information she provided with her request for a hearing sets forth some of her arguments with the IRS. Regarding her Idaho income tax returns, the taxpayer stated she was not clear on her requirement to file. She said that since the Idaho Code cited the IRC for the purposes of determining a filing requirement, if a federal return was not required, then an Idaho return was not required.

The Idaho legislature stated the purpose of the Idaho Income Tax Act in Idaho Code section 63-3002,

[t]o impose a tax on residents of this state measured by taxable income wherever derived and on the income of nonresidents which is the result of activity within or derived from sources within this state.

The courts have confirmed the state's ability to tax its residents and income from Idaho sources. In New York, ex rel Cohn v. Graves, 300 U.S. 308, 312-13 (1937) the court stated, "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." In Shaffer v. Carter, 252 U.S. 37, 52 (1920) the court stated, "[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."

The Idaho Legislature clearly set forth that the Idaho income tax applies to residents of this state (Idaho Code section 63-3002 and Idaho Code section 63-3024). The Legislature defined the term resident in Idaho Code section 63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who was domiciled in this state. The taxpayer has not contested that she was a resident of Idaho in 2001, 2002, and 2003.

The taxpayer questioned the meaning of the statement in the Tax Commission's forms and instructions, "If you are required to file federal income tax returns, you must file an Idaho return." Based upon the taxpayer's interpretation of IRC section 6012, she was not required to file a federal income tax return; therefore, she was not required to file an Idaho income tax return.

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; hence the language in the forms and instructions booklet. 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 taxpayer believes that she was not required to file federal returns, she is required to file Idaho returns if she received income in excess of the threshold amounts. From the information available, it is clear by the community property split of income that the taxpayer had income well over the filing thresholds.

The taxpayer provided limited information on the "Victory Tax" and stated that, since its repeal in 1944, the income tax is voluntary. The victory tax was a federal provision placed in the Internal Revenue Code to promote withholdings and to raise funds to pay for war-time expenses. The tax was passed and repealed within a few years. During the time of the victory tax, Idaho's income tax law made no reference to the federal tax code. The Idaho legislature did not adopt the victory tax; therefore, it had no bearing on Idaho taxation.

Regarding claims that income taxes are "voluntary," courts readily explain that the payment of income tax is mandatory, not optional.

Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary. United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), (per curiam); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988). The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), 'requires that every individual who earns a threshold level of income must file a tax return.' United States v. Pottorf, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to

criminal penalty. *Id.*, (citing 26 U.S.C. § 7203)." United States v. Hartman, 915 F.Supp. 1227 (M.D.Fla. 1996).

The federal income tax is not voluntary, and a person may not elect to opt out of the federal tax laws by a unilateral act of revocation and rescission. See, e.g., *Lesoon v. Commissioner of Internal Revenue*, 141 F.3d 1185, 1998 WL 166114 (10th Cir. 1998); *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993); *Damron v. Yellow Freight System, Inc.*, 18 F. Supp. 2d 812, 819-20 (E.D. Tenn. 1998), *aff'd*, 188 F.3d 506 (6th Cir. 1999)." United States v. John L. Sasscer, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000).

Even though the courts' statements were addressing the voluntary nature of the federal tax laws, the principles and construction of state tax laws are not so dissimilar that these holdings would be inapplicable. Idaho's income tax is not a voluntary tax. It is only voluntary in that the state relies on the voluntary compliance of the residents and part-year residents of Idaho and those businesses and individuals who derive income from Idaho sources.

It is clear from the information available that the taxpayer had income in 2001, 2002, and 2003 in excess of the filing thresholds given in Idaho Code section 63-3030. Therefore, the Tax Commission finds the taxpayer did have a filing requirement for 2001, 2002, and 2003.

In Idaho, it is well established 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. The taxpayer stated she had returns prepared to be filed if she was convinced she was required to do so. The taxpayer has not presented those returns to the Tax Commission. Therefore, the Tax Commission upholds the returns the Bureau prepared as being an accurate representation of the taxpayer's Idaho taxable income.

The Bureau added interest and penalty to the taxpayer's Idaho income tax liability. The Tax

Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated April 12, 2005, 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>
2001	\$1,150	\$ 288	\$ 273	\$1,711
2002	843	211	146	1,200
2003	592	148	71	<u>811</u>
			TOTAL DUE	<u>\$3,722</u>

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

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2006, 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.

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