

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18840
[REDACTED])	
Petitioner.)	DECISION
)	
)	
<hr style="width: 45%; margin-left: 0;"/>		

On March 24, 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 1999 through 2002 in the total amount of \$2,987.

On May 23, 2005, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather wanted to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information from the Idaho Department of Labor that the taxpayer received wages while working in Idaho. The Bureau researched the Tax Commission's records and found that the taxpayer had not filed Idaho individual income tax returns for the years 1999, 2000, 2001, and 2002. The Bureau sent the taxpayer a letter asking him about his requirement to file Idaho income tax returns. The taxpayer did not respond. The Bureau obtained additional information [Redacted], determined the taxpayer was required to file Idaho income tax returns, prepared returns for the taxpayer, and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. He stated that he was unsure of the meaning of some of the words and terms used by the Bureau. He stated that, as he understood it, it does not appear that he is a resident for tax purposes. The taxpayer said that since Idaho

adopted the Internal Revenue Code and the revenue laws are in harmony with each other, the only taxable income that can be derived is from the exploration of natural resources. The taxpayer stated he never received any profit or gain from the disposition of certain natural resource recapture within the exterior limits of the state of Idaho.

The Bureau recognized the taxpayer's statements as those akin to tax protestor movements. Consequently, the Bureau referred the matter for administrative review. The Tax Commission reviewed the matter and sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer chose to provide additional information. The Tax Commission reviewed the additional information the taxpayer provided and found it was more of the typical arguments presented by tax protestor groups. The arguments raised by the taxpayer appear to include: 1) wages are not income; 2) if the income is not received with regard to some contract entered into by the taxpayer, the income derived is not taxable; 3) taxation is somehow related or governed by the Uniform Commercial Code; and 4) common law should prevail over the statutes of the state of Idaho.

The first argument that wages are not income is a very tired argument. The Third Circuit Court of Appeals in United States v. Connor, 898 F.2d 942, 943-944 (3rd Cir. 1990), addressed the issue as follows:

Congress exercised its power to tax income by defining income as, inter alia, "compensation for services, including fees, commissions, fringe benefits and similar items." 26 U.S.C. § 61(a)(1) (Supp. II 1984). Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income. See, e.g., Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir.1986); Connor v. Commissioner, 770 F.2d 17, 20 (2d Cir.1985) (per curiam); Perkins v. Commissioner, 746 F.2d 1187, 1188 (6th Cir.1984) (per curiam); Funk v. Commissioner, 687 F.2d 264, 264 (8th Cir.1982) (per curiam).

Moreover, Connor's argument has already been rejected by this court. In Sauers v. Commissioner, 771 F.2d 64 (3d Cir.1985), cert. denied, 476 U.S. 1162, 106 S.Ct. 2286, 90 L.Ed.2d 727 (1986), the taxpayer argued, inter alia, that wages are property and therefore are not taxable income. Id. at 66 n. 2. This court agreed with the Tax Court that the taxpayer's "legal contentions were patently frivolous," id. at 66, and affirmed the decision of the Tax Court awarding the Commissioner damages for a frivolous claim under 26 U.S.C. § 6673. Id. at 67 70. We take this opportunity to reiterate that wages are income within the meaning of the Sixteenth Amendment. Unless subsequent Supreme Court decisions throw any doubt on this conclusion, we will view arguments to the contrary as frivolous, which may subject the party asserting them to appropriate sanctions.

The Seventh Circuit Court of Appeals in United States v. Koliboski, 732 F.2d 1325, 1329 n.1 (7th Cir. 1984), addressed the issue in the following manner:

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 already are 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.

In the Sixth Circuit, the court has become increasingly prejudiced of individuals bringing forth such arguments. In Perkins v. Commissioner of Internal Revenue, 746 F.2d 1187, 1188 (6th Cir. 1984), the court said the following regarding the wages as income argument.

Petitioner's arguments can be characterized as follows: 1) that wages paid for his labor are non taxable receipts, 2) that the Sixteenth Amendment does not permit an imposition of tax on wages and, 3) that he was entitled to a jury trial. Petitioner also raises several other spurious constitutional arguments.

[1][2][3] These assertions are totally without merit. First, gross income means all income from whatever source derived including compensation for services. 26 U.S.C. § 61(a) & 61(a)(1); Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 75 S.Ct. 473, 99 L.Ed. 483 (1955); Brushaber v. Union Pacific Railroad, 240 U.S. 1, 12, 36 S.Ct. 236, 239, 60 L.Ed. 493 (1916); Funk v. Commissioner, 687 F.2d 264, 265 (8th Cir.1982) (wages received for

services are taxable as income). Second, 26 U.S.C. § 61(a) is in full accordance with Congressional authority under the Sixteenth Amendment to the Constitution to impose taxes on income without apportionment among the states. Third, petitioner was not entitled to a jury trial where he elected to contest the Commissioner's deficiency determination in the Tax Court. Wickwire v. Reinecke, 275 U.S. 101, 105 06, 48 S.Ct. 43, 44 45, 72 L.Ed. 184 (1927); Funk v. Commissioner of Internal Revenue, supra. Petitioner's remaining constitutional objections are frivolous. Funk v. Commissioner of Internal Revenue, supra; Beatty v. Commissioner of Internal Revenue, 676 F.2d 150 (5th Cir.1982).

[4] The Commissioner has requested the imposition of sanctions because of the patently frivolous nature of this appeal. It appearing that this request is well taken, the Commissioner is awarded double costs pursuant to Rule 38, Federal Rules of Appellate Procedure. Litigants are warned that in future cases in which the lower court has clearly explained, as it has here, the frivolous nature of the taxpayer's claim that earned income is not taxable, we will not hesitate to award actual attorney fees to the Commissioner under Rule 38 as it has been uniformly construed.

Considering the foregoing, the Tax Commission finds no merit in this argument of the taxpayer.

The taxpayer's second argument makes reference of an agreement allowing the State to tax him. He stated that he cannot be taxed because he didn't sign an agreement to be taxed. The taxpayer asked, "Where is the agreement?"

The Seventh Circuit Court of Appeals has directly addressed this argument as follows:

The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation but, despite McLaughlin's protestations to the contrary, has been repeatedly rejected by the courts. *See, e.g., Newman v. Schiff*, 778 F.2d 460, 467 (8th Cir.1985); United States v. Drefke, 707 F.2d 978, 981 (8th Cir.), *cert. denied, sub nom., Jameson v. United States*, 464 U.S. 942, 104 S.Ct. 359, 78 L.Ed.2d 321 (1983). Furthermore, case law in this circuit is well-settled that individuals must pay federal income tax on their wages regardless of whether they avail themselves of governmental benefits or privileges. *See Coleman v. Commissioner*, 791 F.2d 68, 70 (7th Cir.1986); Lovell v. United States, 755 F.2d 517, 519 (7th Cir.1984). And finally,

McLaughlin's contention that his religion excuses him from having to pay income tax is forestalled by the Supreme Court's decision in United States v. Lee, 455 U.S. 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982), where the Court held that "because the broad public interest in maintaining a sound tax system is of such high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *Id.* at 260, 102 S.Ct. at 1057. *See also* First v. Commissioner, 547 F.2d 45 (7th Cir.1976) (per curiam).

McLaughlin v. Commissioner, 832 F.2d 986 at 987, 988 (7th Cir. 1987).

Furthermore, the United States Supreme Court discussed the States' right to tax its residents and nonresidents earning income within the state. In Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221 (1920), the court stated,

In our system of government the states have general dominion, and, saving as restricted by particular provisions of the federal Constitution, complete dominion over all persons, property, and business transaction within their borders; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses. Certainly they are not restricted to property taxation, nor to any particular form of excises. In well-ordered society property has value chiefly for what it is capable of producing, and the activities of mankind are devoted largely to making recurrent gains from the use and development of property, from tillage, mining, manufacture, from the employment of human skill and labor, or from a combination of some of these; gains capable of being devoted to their own support, and the surplus accumulated as an increase of capital. That the state, from whose laws property and business and industry derive the protection and security without which production and gainful occupation would be impossible, is debarred from exacting a share of those gains in the form of income taxes for the support of the government, is a proposition so wholly inconsistent with fundamental principles as to be refuted by its mere statement. That it may tax the land but not the crop, the tree but not the fruit, the mine or well but not the product, the business but not the profit derived from it, is wholly inadmissible.

In Cohn v. Graves, 300 U.S. 308, 57 S.Ct. 466 (1937), the court reiterated the States' taxing authority,

That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. 'Taxes are what we pay for civilized society,' see *Compania General de Tabacos v. Collector*, 275 U.S. 87, 100, 48 S.Ct. 100, 105, 72 L.Ed. 177. A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits.

Therefore, by virtue of living within the boundaries of the state of Idaho or by working within those boundaries, the state of Idaho has the right to impose a tax on the income earned within its borders. An implied contract could exist between the State and its residents for the protection of its laws and the enjoyment of its privileges; however, no contract is necessary for the State to impose a tax.

The taxpayer's next contention is not quite clear. It seems that somehow his referring to the Uniform Commercial Code (UCC) insulates him from being taxed. The language suggests 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 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.

The taxpayer also argued that the common law and not the statutes of the state of Idaho should govern this matter. He contends that he has a common law right not to be compelled to pay.

Idaho Code section 73-116 sets out the relation between the common law and the statutes of the state of Idaho. It states:

Common law in force. – The common law of England, so far as it is not repugnant to, or inconsistent with, the constitution or laws of the United States, in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state.

Common law controls only if it is consistent with the Idaho statutes. The statutes of the state of Idaho provide for the taxation of the taxpayer. Therefore, the common law does not insulate him from being taxed.

The arguments presented by the taxpayer did not persuade the Tax Commission that the taxpayer did not have an obligation to file an Idaho income tax return. Furthermore, the taxpayer has provided no documentation or information that would show that 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 taxpayer to show that the tax deficiency is erroneous. Id. Since the taxpayer has failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau also added interest and penalty to the taxpayer's 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 Determination dated March 24, 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>
1999	\$ 239	\$ 60	\$ 98	\$ 397
2000	576	144	191	911
2001	639	160	163	962
2002	595	149	113	<u>857</u>
			TOTAL	<u>\$3,127</u>

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

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

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.
