

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19319
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by staff of the Idaho State Tax Commission (Commission) dated February 14, 2006, asserting additional income tax, penalty, and interest totaling \$257 for 2002.

On February 27, 2006, the petitioner filed a letter of protest that the Commission treated as a petition for redetermination. The Commission notified the petitioner that she could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the staff or, in the alternative, submit additional information to show why the deficiency should be redetermined. She did not request an informal conference but did supply additional argument.

This is a nonfiler case and the second such administrative appeal the Commission has had with this petitioner regarding her tax protester arguments.

The petitioner received income from two different Idaho sources during 2002. It appears from the information in the file that the petitioner received compensation for working in a nursing home and for working in a fast food establishment during 2002. The amount of the income exceeded the filing requirement set out in Idaho Code § 63-3030.

The staff of the Commission sent the petitioner a letter indicating that the records of the Commission indicated that she needed to file an Idaho individual income tax return for 2002. Having received no adequate response, a notice of deficiency determination was issued to the petitioner on February 14, 2006.

The material that the petitioner submitted during this administrative appeal added more tax protester material to that previously in the file. Briefly, the issues raised by the petitioner appear to include: (1) that wages are not income; (2) that the income tax is an unconstitutional “direct” tax; (3) that the income tax is voluntary; (4) that the petitioner is a nontaxpayer; (5) that the Idaho income tax is a “corporate excise tax,” and (6) that there is no law that requires the petitioner to pay this tax.

The first argument of the petitioner is that wages are not income. This is a very tired argument. The Seventh Circuit Court of Appeals addressed the matter as follows:

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. (Emphasis in original.)

United States v. Koliboski, 732 F.2d 1325, 1329 n.1 (7th Cir. 1984).

The second argument set out by the petitioner is that the income tax is unconstitutional. The Fifth Circuit Court of Appeals addressed the issue as follows:

[1] The frivolity of this argument is patently obvious, and the other contentions raised in the Stellys' briefs are equally meritless. It is clear beyond peradventure that the income tax on wages is constitutional. See e.g., Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430, 75 S.Ct. 473, 476, 99 L.Ed. 483 (1955); Eisner v. Macomber, 252 U.S. 189, 207, 40 S.Ct. 189, 193, 64 L.Ed. 521 (1919); Brushaber v. Union Pacific Railroad Co., 240 U.S. 1, 12, 36 S.Ct. 236, 239, 60 L.Ed. 493 (1916); Perkins v. Commissioner, 746 F.2d 1187, 1188 (6th Cir.1984); Granzow v. Commissioner, 739 F.2d 265, 267 68 (7th Cir.1984); Crain v. Commissioner, 737 F.2d 1417 (5th Cir.1984); Funk v. Commissioner, 687 F.2d 264, 265 (8th Cir.1982); Lonsdale v. Commissioner, 661 F.2d 71, 72 (5th Cir.1981); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir.1981); Broughton v. United States, 632 F.2d 706, 707 (8th Cir.1980), cert. denied, 450 U.S. 930, 101 S.Ct. 1390, 67 L.Ed.2d 363 (1981); United States v. Francisco, 614 F.2d 617, 619 (8th Cir.1980),

cert. denied, 446 U.S. 922, 100 S.Ct. 1861, 64 L.Ed.2d 278 (1980); United States v. Russell, 585 F.2d 368, 370 (8th Cir.1978); United States v. Porth, 426 F.2d 519, 523 (10th Cir.1970), cert. denied, 400 U.S. 824, 91 S.Ct. 47, 27 L.Ed.2d 53 (1970); Acker v. Commissioner, 258 F.2d 568, 574 76 (6th Cir.1958), aff'd, 361 U.S. 87, 80 S.Ct. 144, 4 L.Ed.2d 127 (1959).

Every court that has addressed the issue of the constitutionality of the income tax on wages, 28 U.S.C. § 61(a), has held the statute valid. The Stellys' contention to the contrary is frivolous.

Stelly v. Commissioner, 761 F.2d 1113 (5th Cir. 1985).

The petitioner's third argument is that the income tax is voluntary. The Eighth Circuit Court of Appeals addressed the matter as follows: "Appellants' claim that payment of federal income tax is voluntary clearly lacks substance. See Newman v. Schiff, 778 F.2d 460, 467 (8th Cir. 1985)." United States v. Gerads, 999 F.2d 1255 (8th Cir. 1993), cert. den. 510 U.S. 1193 (1994).

The fourth argument set forth by the petitioner was that she was a "nontaxpayer" and therefore was not subject to the Idaho income tax. Idaho Code § 63-3024 sets out that the tax is imposed on every "individual" if their income exceeds the filing requirement. Therefore, this argument made by the petitioner is without merit. See United States v. Drefke, 707 F.2d 978 at 981 (8th cir. 1983) cert. den. sub nom.; Jameson v. United States, 464 U.S. 942 (1983).

The fifth argument set out by the petitioner is that the federal income tax is an unconstitutional "direct tax." Therefore, her wages could not be subject to the tax. Such was the argument of John L. Cheek. In addressing Mr. Cheek's argument that the income tax was unconstitutional, the U. S. Supreme Court stated that Mr. Cheek's arguments were not objectively reasonable or frivolous. Cheek v. United States, 498 U.S. 192 at 205-206 (1991). In the case of Diefendorf v. Gallet, 51 Idaho 619 (1932), the Idaho Supreme Court found the Idaho income tax, which is an excise tax and not a property tax, to be constitutional.

Finally, the petitioner stated the following: "For the last time, Please produce the Law that

specifically requires one in my occupation and of my location and personal circumstances to fill and pay this “Supreme Court” defined, “Direct”, “Corporate Excise Tax”, and I will do so.”

The petitioner’s meaning in this is somewhat unclear and leaves some unanswered questions. Why does one’s occupation make a difference? Why does one’s location make a difference (other than being a resident, part-year resident, or nonresident)? To what specific “personal circumstances” is she referring and why should they make a difference?

It is presumed that the “direct” referred to has to do with the constitutional argument addressed above which has been here adequately addressed. And the Idaho income tax is an excise tax. It is entirely unclear why she feels the Idaho individual income tax is a “corporate” tax. The Idaho individual income tax is imposed by Idaho Code § 63-3024 which states, in part:

Individuals' tax and tax on estates and trusts. -- For taxable year 2001, and each taxable year thereafter, a tax measured by Idaho taxable income as defined in this chapter is hereby imposed upon every individual, trust, or estate required by this chapter to file a return.

The tax asserted by the notice of deficiency determination is clearly upon individuals, not corporations.

Internal Revenue Code § 61 sets out the definition of gross income. The definition is broad, stating, in part:

Gross income defined. (a) General definition. Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

If one is to seek an exemption, as the petitioner here appears to seek, they must rest their argument on clear authority:

The Supreme Court has consistently given this definition of gross income a liberal construction "in recognition of the intention of

Congress to tax all gains except those specifically exempted. " Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430, 75 S.Ct. 473, 476, 99 L.Ed. 483 (1955) (emphasis added); see also United States v. Stewart, 311 U.S. 60, 71, 61 S.Ct. 102, 109, 85 L.Ed. 40 (1940) ("those who seek an exemption from a tax must rest it on more than a doubt or ambiguity"); United States Trust Co. v. Helvering, 307 U.S. 57, 60, 59 S.Ct. 692, 693, 83 L.Ed. 1104 (1939) ("Exemptions from taxation do not rest upon implication."); Bank of Commerce v. Tennessee ex rel. Memphis, 163 U.S. 416, 423, 16 S.Ct. 1113, 1116, 41 L.Ed. 211 (1896) ("[T]he claim for exemption must rest upon language in regard to which there can be no doubt as to its meaning, and ... the exemption must be granted in terms too plain to be mistaken..."). The mere fact that Congress specifically included certain payments as "income" does not mean that all other payments not specifically included are therefore not "income".

Herbert v. United States, 850 F.2d 32, 34 (2nd Cir. 1988).

Idaho Code 63-3030 (2002) sets out the filing requirements for the Idaho income tax. It stated in pertinent part:

Persons required to make returns of income. -- (a) Returns with respect to taxes measured by income in this chapter shall be made by the following:

- (1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code.
- (2) Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of two thousand five hundred dollars (\$2,500), or any part-year resident individual having for the current taxable year a gross income from all sources while domiciled in or residing in Idaho, and from Idaho sources while not domiciled in and not residing in Idaho, which in total are in excess of two thousand five hundred dollars (\$2,500);

The record before the Commission indicates that the income of the petitioner during 2002 exceeded the filing requirement. Idaho Code § 63-3024 imposes the tax asserted by the notice of deficiency.

WHEREFORE, the Notice of Deficiency Determination dated February 14, 2006, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax,

penalty, and interest (calculated to August 31, 2006):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$181	\$45	\$35	\$261

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 _____, 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]
[Redacted]

Receipt No.
