

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19374
[Redacted])	
Petitioners.)	DECISION
)	
)	

PROCEDURAL BACKGROUND

On November 18, 2005, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (Petitioner), for unpaid individual income tax in the amount of \$44,014 for the taxable years 1999 through 2004. The notice advised the Petitioner that if he disagreed with the determination by the Bureau he could petition the Commission for a redetermination.

On January 20, 2006, the Petitioner filed a document the Commission treated as a timely petition for redetermination. The file was transferred to a Tax Enforcement Specialist to prepare the file for legal review. The specialist noticed that the wrong filing status was used for tax years 1999-2001. An administrative error letter rescinding the November 2005 Notice of Deficiency Determination was sent to the Petitioner on January 26, 2006.

On January 31, 2006, the Bureau issued a new Notice of Deficiency Determination to the Petitioner using the same filing status for all years, 1999 through 2004. On April 3, 2006, the Commission received another timely Petition for Redetermination from the Petitioner. The Petitioner used similar arguments as in the previous Petition.

The Commission sent a letter to the Petitioner on April 21, 2006, giving the Petitioner an opportunity to request an informal hearing or present more facts for consideration by the Commission. The Commission received no response to this letter. The Commission sent another

letter on June 20, 2006, asking for a response to the earlier letter. The Petitioner sent a packet of information that was received by the Commission on July 6, 2006, containing similar arguments as in the previous Petitions for Redetermination.

The Commission sent another administrative error letter on August 3, 2006, withdrawing the Notice of Deficiency Determination dated January 31, 2006, because [Redacted], the spouse of [Redacted], was not included on the earlier Notice of Deficiency Determination. [Redacted] was included on a new Notice of Deficiency Determination mailed on August 4, 2006. The Petitioners were notified that unless they mailed a new protest their previous protests and supplemental information would be considered as a timely and properly filed protest to the new Notice of Deficiency Determination. The Petitioners were also notified that unless they requested a hearing within the 63 days allowed by law a decision would be issued.

On September 20, 2006, [Redacted] sent a protest containing nearly identical arguments as presented previously. He also requested a hearing. On September 29, 2006, a letter was mailed to [Redacted] acknowledging receipt of their September 20, 2006, protest letter. In that letter, [Redacted] were given several dates to schedule a hearing. The letter informed them that if they did not respond within 30 days to the request to schedule a hearing a decision would be issued based upon the material currently in the file. At least 30 days have elapsed since September 29, 2006, and [Redacted] have failed to schedule a hearing.

The Commission must therefore decide this matter based on the information contained in the Commission's files. The Commission has reviewed the files, is advised of their contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau.

FACTUAL ISSUES

The Petitioners did not file income tax returns for tax years 1999, 2000, 2001, 2002, 2003, or 2004. In a letter dated November 12, 2005, in response to a “Forgot to File Questionnaire” for tax year 2001, [Redacted] asserted that he was not a citizen or resident of the United States and had not had any taxable wages or income from an employer.

The Bureau investigated the Petitioners’ assertions by accessing federal wage and income information [Redacted]. These records clearly show that the Petitioners had wages and income for the tax periods in question.

The Bureau also investigated the Petitioners’ assertions regarding their residency in [Redacted]. Records of the Commission show that the Petitioners have claimed [Redacted] as their residence [Redacted]. The Commission has a copy of a [Redacted] Warranty Deed that conveyed to the Petitioners the real property upon which the Petitioners live. Additionally, the Commission has records showing that the Petitioners claimed a homeowners’ exemption from property tax beginning in [Redacted] and continued to claim that exemption until the property was [Redacted] sold [Redacted]. The Commission has records indicating that their home was [Redacted] sold [Redacted]. However, the Petitioners continue to live in the home to this date. The Commission has records showing that the Petitioners contested their real property assessment for this residence [Redacted].

The Commission has records showing the Petitioners registered to vote [Redacted] with the same address as above in [Redacted] and [Redacted]. The Commission also has records indicating that the Petitioners voted [Redacted] in 1994, 1996, 1998, 2000, and 2002. The Bureau also found that a resident Idaho Driver’s License was applied for by the Petitioner and issued to the Petitioner, [Redacted] on [Redacted]. According to the records, the Petitioner, [Redacted] did not claim

entitlement [Redacted], which would have indicated his desire or intent to be domiciled [Redacted] where he was employed during these years.

Based upon the information in the Commission's file, the Petitioners exercised rights reserved for citizens of Idaho and demonstrated their intent to be domiciled in Idaho and to be citizens of the United States for the tax periods in question. Additionally, the records show that the Petitioners did have income and taxable wages for the tax periods in question.

ISSUES

The Petitioners seek a redetermination on many grounds, not all of which will be addressed herein. However, they are all without merit and are distortions of the law. The following addresses main themes presented by the Petitioners: (1) payment of taxes is voluntary; (2) the Commission erroneously used a repealed federal statute to collect taxes; (3) the Commission may only collect from "the accrued salary or wage of any officer, employee, or elected official, of the United States . . .," and the Petitioners do not fit into any of those categories; (4) the Petitioners are not obligated to pay taxes because they are not federal employees; (5) the taxes are being collected as a "bill of attainder," which the Petitioners argue is not allowed under the law; (6) the Commission failed to correctly compute the taxes owed.

It appears that many of the arguments offered by the Petitioners do not relate to the 1999 through 2004 tax periods in question. The Commission previously issued a decision upholding a Notice of Deficiency Determination against the Petitioners for the tax year [Redacted] based upon very similar facts and arguments. The Petitioners did not appeal that decision. The Commission has attempted to collect pursuant to that decision, and it appears that the Petitioners are confusing this proceeding with the collection actions on the [Redacted] tax deficiency. Nevertheless, the arguments the Petitioners raise concerning the [Redacted] tax year, although not at issue in this

proceeding, are addressed in this Decision to some extent to again review with the Petitioners that their positions and arguments are fallacious and that they must abide by the law.

LAW AND ANALYSIS

State and federal courts have rejected common tax protestor themes time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (1986), Judge Easterbrook penned,

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. “Tax protesters” have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The Petitioners assert arguments similar to those discussed by Judge Easterbrook. The Petitioners believe that their tax obligation somehow has been eliminated. Simply stated, the Petitioners’ arguments are not supported by fact or law.

1. Voluntary Filing and Payment.

The Petitioners argue that they did not “consent to self-assessing an Idaho State individual income tax against his personal labor and real property rights,” and the Commission does not have “documents signed by Claimant to confirm this rebuttable [sic] presumption.”

The courts have rejected the argument that the obligation to file returns and pay income tax is voluntary. While both the federal and Idaho tax laws are based on honest and forthright self-reporting, this does not support the argument that these laws are optional. Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988); United States v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985).

2. The Repeal of 26 U.S.C. §§ 6361 through 6365 Do Not Excuse Petitioners From Their Tax Obligations

Effective 1990, 26 U.S.C. §§ 6361 through 6365 were repealed. The Petitioners assert that because this law was repealed Idaho has no authority to tax them. Like all of the Petitioners' arguments, this is another example where they contort the law. The Petitioners' argument has no merit as the law on this matter is as follows:

. . . the Federal-State Tax Collection Act of 1972, 26 U.S.C. §§ 6361-6365, which was designed to encourage states to conform their personal income tax structure to that of the federal government. In furtherance of this goal, the Act provided that a state with a "qualified state individual income tax," i.e., a tax closely conforming to the model of the federal income tax, could enter into an agreement to have the state's individual income taxes collected and administered by the federal government. As noted in W. Hellerstein, Symposium on State and Local Taxation, 39 Vand. L. Rev. 1033, 1055 n. 31 (May 1986), none of the states chose to enter into such an agreement. Sections 6361-6365 were subsequently repealed in November 1990, nine years prior to the tax year at issue in Mr. Barnes' protest. Public Law 101-508, Title XI, § 11801(a)(45), 104 Stat. 1388-522.

In *Franchise Tax Board v. United States Postal Service*, 467 U.S. 512 (1984), the United States Supreme Court addressed the scope of §§ 6361-6365 in deciding a challenge to California's authority to require the Postal Service to comply with the Franchise Tax Board's orders to withhold delinquent state income tax from employee wages. One of the arguments raised by the Postal Service was that Congress intended states to use the provisions for collecting state tax liabilities found in 26 U. S. C. §§ 6361-6365 and that California could not take direct collection action against the Postal Service. The Supreme Court rejected this argument, stating that "nothing in that statute, which permits States to use the summary collection procedures of the Internal Revenue Service, limits the power of States to use any other available procedure." 467 U.S. 512, 525 n.22. See also, *Michigan Central Railroad Co. v. Powers*, 201 U.S. 245, 292-293 (1906) (with respect to state taxation, the state has the freedom of a sovereign, both as to objects and methods).

There is no federal statute or case law supporting Mr. Barnes' argument that only the Secretary of the Treasury or his delegate may determine and assess New Mexico personal income taxes. Nor does state law provide any authority for Mr. Barnes' position. In *Holt v. New Mexico Department of Taxation & Revenue*, 2002 NMSC 34, ¶ 9, 133 N.M. 11, 59 P.3d 491, the Mexico Supreme Court specifically held that "the State of New Mexico has the authority to assess and collect taxes without federal supervision." The Holt decision is binding on all state courts and administrative agencies and effectively

disposes of Mr. Barnes' argument on this issue. See *Alexander v. Delgado*, 84 N.M. 717, 507 P.2d 778 (1973) (decisions of the New Mexico Supreme Court are binding on all lower courts).

In the Matter of the Protest of Donald W. Barnes, To Assessment of 1999 Personal Income Tax Issued Under Letter ID L1666721792, Taxation and Revenue Department of the State of New Mexico, No. 05-22, October 17, 2005.

Idaho, like New Mexico, does have the authority to tax the Petitioners' individual income. Under our federalist system of government, the power to raise revenue to support the functioning of the government [i.e., the power to tax] is generally considered a concurrent state and federal power. The power of the states to tax the income of individuals was first established by the United States Supreme Court in *Shaffer v. Carter*, 252 U.S. 37 (1920). In that case, Shaffer brought suit to enjoin the state of Oklahoma from collecting any tax assessed against him under the state's income tax law. Although Shaffer was a nonresident of Oklahoma, the Court found that the Oklahoma tax on his Oklahoma source income was constitutional. Justice Pitney, writing for 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 transactions within their border; 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.

Id. at 51. Justice Pitney went on to write that:

Income taxes are a recognized method of distributing the burdens of government, favored because requiring contributions from those who realize current pecuniary benefits under the protection of the government, and because the tax may be readily proportioned to their ability to pay. Taxes of this character were imposed by several of the states at or shortly after the adoption of the Federal Constitution.

The rights of the several states to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of this court. In *McCulloch v. Maryland*, 4 Wheat. 316, while denying their power to impose a tax upon any of the operations of the

federal government, Mr. Chief Justice Marshall, speaking for the court, conceded (pp. 428-429) that the states have full power to tax their own people and their own property, and also that the power is not confined to the people and property of a state, but may be exercised upon every object brought within its jurisdiction saying: "It is obvious, that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation," etc.

In *Michigan Central R.R. Co. v. Powers*, 201 U.S. 245, the court, by Mr. Justice Brewer, said (pp. 292, 293): "We have had frequent occasion to consider questions of state taxation in the light of the federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over state taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods."

That a state may tax callings and occupations as well as persons and property has long been recognized.

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. . . . It [taxation] may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."

And we deem [sic] it clear, upon principle as well as authority, that just 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 nonresidents from their property or business within the state, or their occupations carried on therein enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders.

Id. at 51-52. (Citations omitted.) See also, People of State of New York, ex rel. Cohn v. Graves, 300 U.S. 308, 312-13 (1937).

3. The Commission may collect from 'any person'. The Commission is not limited to 'the accrued salary or wage of any officer, employee, or elected official, of the United States . .

”
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The Petitioners argue that IRC § 6331(a) only allows collection from “the accrued salary or wage of any officer, employee, or elected official, of the United States. . . .” However, this is an incorrect reading of the statute. The statute reads as follows:

(a) Authority of Secretary.--If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under [section 6334](#)) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in [section 3401\(d\)](#)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

The first line of the statute allows levy upon “any person.” Id. A “person” is defined in IRC § 7701(a)(1) as:

When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof –
(1) Person. The term ‘person’ shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Levy is appropriate against the Petitioners. Construing the statute to limit the meaning of “person” to “the accrued salary or wage of any officer, employee, or elected official, of the United States. . . .” is incorrect. IRC § 6331(a). The phrase “the accrued salary or wage of any officer, employee, or elected official, of the United States” is placed in the statute for use if the “person” whose

property is being levied against is an “officer, employee, or elected official, of the United States” Id. and IRC § 7701(a)(1). The phrase “the accrued salary or wage of any elected official, of the United States” has no application to the Petitioners. IRC § 6331(a). For instance, in the case of G.M. Leasing Corp. v. United States, 429 U.S. 338, 97 S.Ct. 619, 50 L.Ed.2d 530 (1977), the United States Supreme Court made no such interpretation of IRC § 6331(a), as contemplated by the Petitioners when deciding on levy issues in a case against a corporation. The Petitioners’ arguments have no merit. See also, U. S. v. Bloom, Civ. No. 35070 (U.S. District Court, Northern Dist. of California, S. Div., 04/23/1958); and Lisa Fagan, JD, LLM, *Statute of Limitations on Assessment and Collections*, 15 Mertens Law of Fed. Income Tax’n § 57:81 (2006).

4. The Petitioners’ Application of 5 U.S.C. § 5517 Applies Only to Federal Employees

The Petitioners somehow argue from their reading of 5 U.S.C. § 5517 that the Commission may only collect taxes from the Petitioners if they are federal employees and that the Commission must provide documentation showing that the Commission has entered into an agreement with the United States Secretary of the Treasury authorizing the collection of taxes. The United States Court of Claims explained the simple function of 5 U.S.C. § 5517 in Clincher v. U. S., 499 F.2d 1250 (1974), as follows:

The United States withholds state income taxes from its employees as a result of contracts entered into with states pursuant to 5 U.S.C. § 5517. In relevant part that statute provides as follows:

§ 5517. Withholding State income taxes

- (a) When a State statute-(1) provides for the collection of a tax by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to the State; and
- (2) imposes the duty to withhold generally with respect to the pay of employees who are residents of the State; the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for

agreement from the proper State official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the State withholding statute in the case of employees of the agency who are subject to the tax and whose regular place of Federal employment is within the State with which the agreement is made. * * *

(b) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a State for services performed in withholding State income taxes from the pay of the employees of the agency.

499 F.2d 1250, at 1253.

The Petitioners take a statute applicable to federal employees out of context and apply it to themselves. This of course does not work because they are not federal employees. The statute, the regulations, and the case law regarding the statute relate to the withholding of federal employees' income. Lung v. O'Cheskey, 358 F.Supp. 928 (D.C.N.M. 1973); 31 C.F.R. § 215. 5 U.S.C. § 5517, is written for federal employees and applies only to federal employees. The Petitioners are not federal employees and the statute has no application to them. Idaho has the authority apart from 5 U.S.C. § 5517 to enforce the tax laws of Idaho. See #2 above.

5. The Petitioners' Claims Regarding Bills of Attainder are Without Merit

This claim is concerning previous actions by the Commission against the Petitioners for [Redacted] taxes. This claim is not relevant to this matter. Nevertheless, so that it is not raised again, the Commission will address it. First, the Petitioners in the previous proceeding did have the right to a judicial trial but failed to avail themselves of that option by not appealing the decision of the Commission. Nevertheless, any argument as a bill of attainder is off point as shown by the discussion by Chief Judge Turrentine in another case as follows:

Plaintiffs' passing comment in their complaints that the fine imposed on them constitutes a bill of attainder forbidden by Article I,

§ 9, cl. 3 of the Constitution, is wholly insupportable. [Section 6702](#) of the Code does not legislatively inflict punishment upon named individuals or an identifiable group. See L. Tribe, *American Constitutional Law* § § 10-5, 10-6 (1978). Although it is obviously true that Congress enacted [§ 6702](#) because of its concern about the activities of tax protesters such as the plaintiffs, the provision penalizes illegal conduct, not tax protesters as such. A law that fines those who file frivolous tax returns in order to deter such activity is no more a bill of attainder than a law that punishes murderers in order to deter homicide. As Justice Frankfurter explained years ago, “So long as the incidence of legislation is such that the persons who engage in the regulated conduct, be they many or few, can escape regulation merely by altering the course of their own present activities, there can be no complaint of an attainder.” [Communist Party v. Control Board, 367 U.S. 1, 88, 81 S.Ct. 1357, 1406, 6 L.Ed.2d 625 \(1961\)](#).

[Milazzo v. U.S.](#), 578 F.Supp. 248, at 253, 84-1 USTC P 9167, 53 A.F.T.R.2d 84-600, (D.C.Cal.,1984).

6. Petitioners’ Claim That the Commission “Failed to Compute the Fair Market Value of Belligerent Claimant’s Labor, Assessing Claimant a Liability As If Claimant’s Labor Property Has Zero Value” According to 26 U.S.C. §83 is Nonsensical.

The Petitioners take the wording of 26 U.S.C. § 83 out of context in every sense. The Petitioners’ reasoning is nonsensical and irrelevant; 26 U.S.C. § 83 is a statute which deals primarily with transactions such as stock options and transfers of partnership interests and the like. See 26 C. F. R. § 1.83-1. The Petitioners’ arguments of how to calculate “only the excess of the fair market value” according to 26 U.S.C. § 83 are nonsensical. The Commission refers the Petitioners to annotated 26 C.F.R. § 1.83-1, 26 U.S.C. § 83 and the accompanying annotations for guidance on the correct application of the law to their facts. The Petitioners have applied it nonsensically.

The Petitioners’ income is mainly W-2 income. The Petitioners claim they have evidence which shows that the Commission’s calculations are incorrect. Without that evidence, the Commission may only act upon the information it currently has in the file. The Commission cannot

act on information it cannot see. The Petitioners have a duty to file a tax return. They have not done so, and the Commission has calculated the Petitioners income correctly from the available resources. A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Comm'n, 110 Idaho 572 (Ct. App. 1986). Without more information, the Petitioners fail to meet their burden to prove the Commission miscalculated the deficiency. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

CONCLUSION

It is important to note that many of the arguments made by the Petitioners herein are irrelevant as they pertain to a case for [Redacted] income tax which the Petitioners did not successfully appeal.

Petitioners' arguments are common tax protestor arguments without merit. The Petitioners try to legitimize their arguments by couching them in statutory language and citing cases. The arguments entirely miss the proper application of the law they cite. However they want to couch their arguments, they are still nonsensical tax protestor arguments without any merit.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Comm'n, 110 Idaho 572 (Ct. App. 1986). Having presented no further information in support of their argument other than the common nonsensical tax protestor arguments, the Petitioners have failed to meet their burden of proving the

deficiency determination incorrect. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Bureau also added interest, which will continue to accrue pending payment of the tax liability pursuant to Idaho Code § 63-3045(6), and penalty to the petitioners' tax deficiency. The Tax Commission finds those additions appropriate as provided for in Idaho Code §§ 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated August 4, 2006, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioners pay the following additional tax, penalty, and interest for 1999, 2000, 2001, 2002, 2003, and 2004:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/04	\$6,304	\$1,576	\$ 632	\$ 8,512
12/31/03	4,394	1,099	704	6,197
12/31/02	4,547	1,137	970	6,654
12/31/01	4,969	1,242	1,379	7,590
12/31/00	5,048	1,262	1,790	8,100
12/31/99	4,300	1,075	1,868	7,243
			TOTAL DUE	\$44,296

Interest has been computed through December 15, 2006.

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

An explanation of the Petitioners' 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.
