

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 19466
[REDACTED],)
) DECISION
Petitioner.)
_____)

On June 22, 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 year 2004 in the total amount of \$453.

On August 18, 2005, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but did provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer filed her 2004 Idaho individual income tax return reporting her income as zero. Attached to her return was a Substitute for Form W-2, Wage and Tax Statement form showing that the taxpayer worked for [Redacted] and that her wages for employment were zero. However, the form also showed that her employer withheld \$1,015.70 for state income tax. During the processing of the taxpayer's return, the system identified an error which caused the return to be set aside for review. The individual that reviewed the return identified the problem and referred the return for further examination to the Tax Discovery Bureau (Bureau).

The Bureau researched the Tax Commission's records and found that the taxpayer's employer submitted an informational W-2 Wage Statement showing the taxpayer had wages in the amount of \$28,454. The Bureau reviewed this information and corrected the taxpayer's Idaho income tax return. The Bureau sent the taxpayer a Notice of Deficiency Determination which the taxpayer protested. The taxpayer stated the W-2 she received from her employer

contained erroneous income information; however, the amount listed as being withheld on the W-2 was correct. She stated she complied with all the federal and state laws and, according to Idaho's instructions, she was to begin with federal adjusted gross income. Since her federal adjusted gross income was zero, she determined her Idaho taxable income to be zero.

The Bureau recognized the taxpayer's statements as those similar to the members of various tax protestor movements. Therefore, 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 did not respond to the Tax Commission's letter so a follow-up letter was sent. The taxpayer did respond to the follow-up letter with a packet of material which included an Affidavit of Service via U.S. Postal Service, a seven page form titled Demand for Verified Evidence of Lawful Federal Assessment, a thirteen page Affidavit of Material Facts, copies of the letters the Tax Commission sent her, and a short cover letter. The Tax Commission, having reviewed the information provided, decided the matter as follows.

For the taxable year 2004, the taxpayer was employed by [Redacted]. Her earnings exceeded the filing requirements of Idaho Code section 63-3030. Therefore, the taxpayer was required to file an Idaho individual income tax return. The taxpayer filed a return but she reported her income as zero and claimed her employer was erroneous in reporting that she had income on the W-2 Wage Statement. In addition to claiming the W-2 Wage Statement was incorrect, the taxpayer argued that she was not employed by or had contracts with the federal government; that she was an inhabitant but not a resident of Idaho; that she did not live or work in the "United States" as defined in the Internal Revenue Code (IRC); that she was a non-citizen national; that she had no income from a trade or business; that she did not have income as

defined by the Constitution or the U.S. Supreme Court; that she did not earn wages as defined in the IRC; that she had no state taxable income because she had no federal taxable income; that nothing in the IRC makes her liable for a tax; and that the burden of proof is on the Tax Commission that she owes a tax.

Idaho Code section 63-3002 states the intent of the Idaho legislature of the Idaho income tax act. It states in pertinent part,

. . . [t]o make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . .

Section 63-3002 identifies the provisions of the Federal Internal Revenue Code for the measurement of taxable income. The end result of that measurement is that Idaho taxable income is the same as federal taxable income, subject to the modifications of the Idaho law. Therefore, if the taxpayer has income for federal purposes, she has income for Idaho purposes.

The taxpayer stated she had no earned income as defined by the Constitution and the U.S. Supreme Court. The taxpayer believes that income can only be derived from corporate profits. However, that is not what the U.S. Supreme Court said in the cases cited by the taxpayer. The Court stated that the Corporation Excise Tax Act of August 5, 1909, defined the word income. The Court stated it was obvious that the decisions written in developing the definition of the word "income" as used in the Corporation Excise Tax Act of 1909 has the same meaning and content in the Income Tax Acts of 1913, 1916, and 1917. This does not mean that income is only corporate profit. It means income is what the Court stated in Eisner v. Macomber, 252 U.S. 189 (1920), the gain derived from capital, from labor, or from both combined and to include

profit gained through the sale or conversion of capital assets. See Merchant's Loan & Trust Company v. Smietanka, 255 U.S. 509, 509-510 (1921).

Therefore, income is not just corporate profit. Income includes, but is not limited to, all those items listed in IRC section 61. Even though the taxpayer claimed she did not earn wages, it is fairly evident that the taxpayer was employed and did receive remuneration for her labor. Whether her payment is called wages, salary, commissions, fees, or something else, it was compensation for services or labor. All are included in IRC section 61 under compensation for services, fees, commissions, etc. And if there still remains a question about wages being income, in United States v. Koliboski, 732 F.2d 1328, 1330 n.1 (7th Cir. 1984), the court stated,

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 are already 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)

Regardless of the taxpayer's beliefs or theories, she had gain from her labor and that gain is termed income. Therefore, if the taxpayer's income exceeded the filing threshold provided in Idaho Code section 63-3030, she was required to file a return and pay a tax.

The taxpayer stated there is no section in the IRC or the state statutes that makes anyone, earning his living exclusively within the states of the Union, liable for a tax on his income. On the contrary, the courts have pointed out that,

[IRC] Section 1 imposes an income tax on the income of every individual who is a citizen or resident of the United States. During the years at issue petitioner resided in Illinois and therefore was a resident of the United States and subject to tax under section 1. A Federal income tax return must be filed by all individuals receiving gross income in excess of certain minimum amounts. Sec. 6012;

sec. 1.6012-1(a), Income Tax Regs. Petitioner's gross income in each year exceeds the minimum amount. In short, petitioner is a taxpayer subject to the Federal income tax laws. Solomon v. Commissioner, T.C. Memo 1993-509.

As a citizen of the United States during the years at issue, petitioner is subject to United States Federal income tax on his worldwide income. Sec. 1; Cook v. Tait, 265 U.S. 47 (1924); sec 1.1- 1(a)(1) and (c), Income Tax Regs. It is unnecessary to determine whether that income was from sources within or without the United States since petitioner is not a nonresident alien. See sec. 861." Dacey v. Commissioner, T.C. Memo 1992-187.

Therefore, since IRC section 1 imposes a tax on the taxable income of every individual and the taxpayer had taxable income, the taxpayer was made liable, subject to, and required to file an income tax return. Likewise, Idaho Code section 63-3024 imposes a tax, measured by Idaho taxable income, on the income of individuals that are residents of Idaho. Furthermore, 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 taxpayer stated she was an inhabitant of Idaho. Other information available shows the taxpayer acquired an Idaho driver's license in 1998 and renewed it in 2002. She was employed in Idaho from 1995 through 2006. She also filed Idaho resident income tax returns for the years 1996 through 2004. All this information indicates the taxpayer was a resident of Idaho and since the taxpayer has not provided any information to suggest otherwise, it is presumed that she was also domiciled in Idaho. Domicile itself affords a basis for a state's individual income tax. As the court stated in New York, ex rel Cohn v. Graves, 300 U.S. 308, 312-13 (1937), "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. . . . 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."

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 being an inhabitant of the state was clearly a resident of Idaho; subject to and liable for Idaho's tax measured by her income.

The taxpayer stated that the Tax Commission has the burden of proving a liability imputed to her. However, when determining whether an income tax liability exists, the taxpayer bears the burden of showing she is entitled to deductions from income or that her income is exempt. New Colonial Ice Co., Inc. v. Helvering, 292 U.S. 435, 54 S.Ct. 788 (1934). Furthermore, 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. Other than the various tax protestor type arguments, the taxpayer has provided nothing to show that the Notice of Deficiency is erroneous. The taxpayer has not carried her burden.

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 or that the taxpayer did not have any taxable income. Therefore, after reviewing the adjustment the Bureau made to the taxpayer's return, the Tax Commission finds the adjustment appropriate and hereby upholds the adjustment.

The Bureau added interest and penalty to the taxpayer's tax deficiency. The Tax Commission reviewed those additions and found the addition for interest appropriate as provided for in Idaho Code section 63-3045. However, the penalty the Bureau added for fraud was not supported by the documentation provided. In Colman v. CIR, 791 F.2d 68 (7th Cir. 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 taxpayer may whole-heartedly believe in the propaganda peddled by the tax protestor movements, but this does not necessarily show the intent to evade the tax. The fraud penalty in all reality should be the penalty added; however, without the proven intent to evade, the Tax Commission can only penalize the taxpayer for negligence.

WHEREFORE, the Notice of Deficiency Determination dated June 22, 2005, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is 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>
2004	\$297	\$15	\$31	\$343

Interest is calculated to January 1, 2007.

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

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

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2006, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
