

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 20157
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On February 22, 2007, 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 2002 through 2004 in the total amount of \$14,786.

On April 26, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer returned the Tax Commission's hearing rights letter with a signed stamp across it citing UCC sections 3-419 and 3-402(b)(1), HJR 192, and Public Law 73-10. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer filed Idaho individual income tax returns for the taxable years 2002, 2003, and 2004 reporting that he had no income and no taxable income. Attached to the taxpayer's returns were Forms 1099-MISC that were altered by the taxpayer to what he believed was the correct amount that should have been reported as nonemployee compensation. The taxpayer changed the nonemployee compensation.

The taxpayer's returns were referred to the Tax Discovery Bureau (Bureau) which reviewed the returns, obtained additional information [Redacted], determined the taxpayer did not correctly report his income, corrected the returns, and sent the taxpayer a Notice of Deficiency Determination. The taxpayer protested the Bureau's determination. He stated the returns he filed correctly reported his position regarding gross income and taxable income. He stated his returns reported the correction of errors he found and disputed on Forms 1099. The

taxpayer stated that he did not receive nonemployee compensation or self-employment income as the Forms 1099 purport. He stated that since the Idaho Code relies on the Internal Revenue Code (IRC) and the Idaho Form 40 instructs him to enter his federal adjusted gross income, which he did, his Idaho returns were correctly filed. The taxpayer stated that since the Tax Commission relies on the IRC, it has the burden of proof pursuant to 26 USC 6201(d) to show he received income from a third party. The taxpayer furthered his argument by citing Idaho Code section 63-3030(a)(1) stating that he clearly was not a person required to make a return of income. He stated he did not earn nonemployee compensation because that compensation constitutes self-employment income generated from a trade or business, and a trade or business is defined in IRC section 7701(a)(26) as the performance of the functions of a public office. He stated he was never connected to the performance of a public office and neither were the payers who issued the Forms 1099-MISC.

The Bureau acknowledged the taxpayer's protest and referred the matter for administrative review. The Tax Commission sent the taxpayer a letter discussing the methods available for redetermining a Notice of Deficiency Determination. The taxpayer returned the Tax Commission's letter stamped as being "ACCEPTED FOR VALUE and RETURNED FOR VALUE." The stamp referenced UCC sections 3-419 and 3-402, HJR 192, and Public Law 73-10. The taxpayer's social security number was referenced, an Employer Identification number was provided, a Bond number was provided, a Posted Certified Account Invoice number was provided, and the taxpayer signed the stamp as an agent. The taxpayer gave no indication that he would be sending any additional correspondence or information, and there was no indication the taxpayer desired a hearing. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayer's returns for 2002, 2003, and 2004 were filed reporting no adjusted gross income and no taxable income. Attached to the taxpayer's returns were Forms 1099-MISC from various payers. Some of the payers were common in the three years. Included with each of the Forms 1099-MISC was a statement signed by the taxpayer that he was rebutting the document because it erroneously alleges that the payment made to the "RECIPIENT" was made in the course of a trade or business. Also attached to the taxpayer's 2004 return was a commercial affidavit addressed to the Internal Revenue Service that explained why the taxpayer believed the Forms 1099-MISC were erroneous. That affidavit also stated that the taxpayer does not deny receiving private sector compensation.

Idaho Code section 63-3002 states it is legislative intent that the Idaho income tax act be identical to the IRC as it relates to the measurement of taxable income. Taxable income is gross income less various subtractions and deductions allowed in the IRC. IRC section 61(a) states that gross income is all income from whatever source derived. Gross income includes wages, salaries, income from a trade or business, rents, royalties, and other compensation. IRC section 61 provides a list of what is considered gross income but it also states that the list is not a mutually exclusive list.

Idaho Code section 63-3030 provides the income thresholds for filing Idaho individual income tax returns. The taxpayer argued that the requirement to file an Idaho income tax return hinges on whether a federal income tax return was filed. In a way that is true; however, just because an individual does not file or believes he is not required to file a federal return does not automatically exempt him from filing an Idaho individual income tax return. Idaho Code section 63-3030 provides Idaho's filing thresholds by referencing the filing requirements of IRC section 6012(a)(1). 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.

The taxpayer did not deny that he received compensation from the private sector. That compensation is includable in gross income and counts towards the income necessary for filing an Idaho income tax return. Therefore, if the taxpayer's private sector compensation exceeded the federal exemption amount, he was required to file and report his income to Idaho.

The taxpayer argued the amounts reported on the Forms 1099-MISC were incorrectly shown as nonemployee compensation because this alleges he was in a trade or business, and a trade or business is defined by IRC section 7701(a)(26) as the performance of the functions of a public office. The taxpayer stated neither he nor the payers identified on the Forms 1099 were involved in the performance of the functions of a public office.

In his interpretation of IRC section 7701(a)(26), the taxpayer misses a key component of that section's definition of the term "trade or business." Subpart (26) states, "The term 'trade or business' includes the performance of the functions of a public office." This subpart does not state that a trade or business is exclusively the performance of the functions of a public office. It states it includes the performance of the functions of a public office. In fact, IRC section 7701(c) defines the terms "includes" and "including" when used in a definition contained in the IRC. It states that the terms includes and including shall not be deemed to exclude other things otherwise within the meaning of the term defined. Therefore, the term trade or business also includes those things generally attributable to the words trade and business.

Regardless of whether the taxpayer believes the services provided to the payers listed on the Forms 1099-MISC constitutes or comes up to the level of a trade or business, the taxpayer received compensation or remuneration for his services. According to IRC section 61, that

compensation is part of the taxpayer's gross income. The taxpayer did not deny the receipt of the compensation, only that it may have been erroneously classified. For Idaho income tax purposes, the classification of the compensation has no effect on the taxpayer's Idaho tax. The income can be classified as wages, self-employment income, earned income, unearned income, etc.; it is still part of gross income and reportable on the Idaho income tax return.

The taxpayer did not argue that he did not receive the income reported in the Tax Commission's Notice of Deficiency Determination. He presented nothing to show the deficiency determination is incorrect. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986); Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The arguments the taxpayer presented are variations of tax protestor theories that have been rejected by the courts and the Tax Commission time and time again.

The Bureau added interest and penalty to the taxpayer's Idaho tax. The Tax Commission reviewed those additions and found them to be appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046. The penalty added by the Bureau was for fraud with the intent to evade tax. The Tax Commission found this penalty appropriate based upon its prior dealings with the taxpayer. In 2000, the taxpayer was sent a Notice of Deficiency Determination for the tax years 1994 and 1996 through 1998 for failing to file Idaho income tax returns. The taxpayer's basis for not filing Idaho returns was another tax protestor theory that ultimately landed the individual he worked with in federal prison. This penalty is appropriate now because it is readily apparent that the taxpayer has been evading his tax obligations for more than ten years and has no intention to stop trying to evade the tax.

WHEREFORE, the Notice of Deficiency Determination dated February 22, 2007, 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>
2002	\$3,330	\$1,665	\$ 913	\$ 5,908
2003	5,206	2,603	1,152	8,961
2004	138	69	22	<u>229</u>
			TOTAL DUE	<u>\$15,098</u>

Interest is calculated to November 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 \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2007, 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.  
  
\_\_\_\_\_