

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20325
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On April 27, 2007, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner), proposing income tax, penalty, and interest for taxable years 2003 through 2005 in the total amount of \$6,880.

The petitioner filed a timely appeal. He did not request a hearing. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

Tax Commission records showed the petitioner was an Idaho resident who appeared to meet the Idaho individual income tax filing requirements. The Bureau contacted the petitioner for an explanation of why his 2003 through 2005 Idaho returns had not been filed. He responded by sending a document titled, "OFFICIAL COMPLAINT IDAHO STATE TAX COMMISSION SIGNATURE REQUIREMENTS UNDER THREAT AND DURESS" and other tax protestor materials.

[Redacted]. The Bureau prepared 2003 through 2005 Idaho returns on behalf of the petitioner and sent him a NODD. The petitioner appealed the determination with a document titled, "VERIFICATION AND VALIDATION OF DUTY, OBLIGATION, LIABILITY, REQUIREMENT OR DEBT INQUIRY" and typical tax protestor arguments.

The petitioner, calling himself a declarant, wrote that "By requiring Declarant to sign forms, IDAHO STATE TAX COMMISSION is inadvertently requiring Declarant to form a 'contract' with

IDAHO STATE TAX COMMISSION and giving Declarant the ‘appearance’ of an obligation, when none, in fact existed without Declarant’s signature.” The petitioner then requested copies of documents showing the authority of the Idaho State Tax Commission to require him to file returns and pay taxes owed under the law.

The Bureau recognized the petitioner’s statements as those akin to tax protestor movements. Consequently, the Bureau referred the matter for administrative review. The Tax Commission reviewed the file and sent the petitioner a letter giving him two options for having the NODD redetermined. The petitioner did not respond.

The argument that the Tax Commission is inadvertently requiring the petitioner to form a contract with the State of Idaho by requiring the petitioner to sign forms has been addressed for many years. The United States Court of Appeals Seventh Circuit addressed the matter 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).

McLaughlin v. Commissioner, 832 F.2d 986 (1954).

The other arguments raised by the petitioner appear to question the authority of the Tax Commission to require him to file a return and pay taxes due.

The United States Supreme Court discussed the States' authority to tax their 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.

Persons who are required to file an Idaho individual income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. The petitioner had taxable income subject to Idaho individual income tax. In sum, the petitioner was required to file an Idaho individual income tax return and pay the Idaho income tax that was correctly due on those returns.

Idaho law directs the Tax Commission to determine the correct amount of tax a person owes and to issue a Notice of Deficiency Determination when a deficiency is found.

63-3045. Notice of Redetermination or Deficiency -- Interest.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery . . .

As stated above, the specialist found the information reported by the petitioner's employers and other persons in the Forms W-2 and 1099 indicated the petitioner was required to file and report his income. Because the petitioner was domiciled in Idaho and was an Idaho resident, the specialist correctly determined the petitioner's income was subject to Idaho individual income tax, prepared provisional returns, and issued a Notice of Deficiency Determination.

It is well settled in Idaho that provisional returns determined by the Idaho State Tax Commission are presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810,

814 (1984); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id.

The petitioner failed to show that the provisional returns prepared by the Tax Commission were incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the petitioner's taxable income for the years in question and that the amounts shown due on the Notice of Deficiency Determination are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated April 27, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$ 268	\$ 67	\$ 58	\$ 393
2004	1,848	462	292	2,602
2005	2,961	740	290	<u>3,991</u>
			TOTAL DUE	<u>\$ 6,986</u>

Interest is computed through October 15, 2007.

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

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

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.
