

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 21059
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

PROCEDURAL BACKGROUND

The Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) mailed a letter dated December 28, 2007, to [Redacted] (Petitioner) notifying her that the Commission had obtained information that indicated she needed to file Idaho Individual Income Tax Returns for tax years 2003 through 2006. The Petitioner responded with arguments that lack a reasonable basis in fact or law and denied a requirement to file.

The Bureau issued a Notice of Deficiency Determination dated February 14, 2008, to the Petitioner, for an unpaid individual income tax liability in the amount of \$15,797 for tax years 2003 through 2006. The taxes were based upon federal data available to the Commission. The notice advised the Petitioner that if she disagreed with the determination by the Bureau she could petition the Commission for a redetermination.

In response, the Petitioner mailed more documentation that lacked a reasonable basis in fact or law and was postmarked March 26, 2006, which the Bureau treated as a timely petition for redetermination.

The Bureau mailed the Petitioner a letter acknowledging that a protest had been filed and that the matter was being transferred to the legal department of the Commission. The Petitioner responded with a letter dated April 16, 2008, that again lacked a reasonable basis in law or fact. In

addition, the Petitioner stated that “the information presented to your office is not a protest, the undersigned Secured Party is simply presenting the evidence.”

The legal department then sent a letter to the Petitioner dated June 11, 2008, inviting the Petitioner to have a hearing and/or submit additional information. The Commission received a letter on June 27, 2008, from the Petitioner acknowledging receipt of the Commission’s June 11, 2008, letter. Therein, the Petitioner did not request a hearing and continued to assert arguments lacking a reasonable basis in fact or law. The Petitioner again repeated that the information she presented was not a protest.

The Commission sent another letter dated July 3, 2008, to the Petitioner similar to the June 11, 2008, letter inviting the Petitioner to have a hearing and/or submit additional information. The Petitioner was again informed that unless a hearing was held or additional information was received a decision may be made based upon the information in the file. The Commission received another letter from the Petitioner on July 10, 2008, which was similar to the Petitioner’s June 27, 2008, letter. Therefore, the Commission must 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 BACKGROUND

The Petitioner did not file Idaho returns for tax years 2003 through 2006. The Petitioner did reside in Idaho during the years 2003 through 2006.

The Petitioner also failed to file returns with the IRS for years 2003, 2004, 2005, and 2006. The Commission obtained federal data from W-2s showing wage income for the previous

years. The Bureau, using the information off of these returns, calculated income amounts for all of the years in question.

The correspondence the Commission has received from the Petitioner asserts arguments commonly made by tax protestors; arguments that the Tax Commission repeatedly has addressed and rejected.

### PROTESTED ISSUES

The Petitioner denies an income tax liability with Idaho. The Petitioner states in her correspondence with the Commission that “the information presented to your office is not a protest, the undersigned Secured Party is simply presenting the evidence.” See letters from Petitioner dated April 16, 2008, June 23, 2008, and July 7, 2008. The Commission may proceed to collect on the basis that the Petitioner has failed to protest the tax deficiency pursuant to Idaho Code § 63-3045.

The Commission will also address some of the Petitioner’s reasons for denying an Idaho income tax liability. All of the Petitioner’s reasons are without merit and are distortions of the law. The following addresses multiple themes presented by the Petitioner and are not necessarily in the same order as presented by the Petitioners (1) she is not a “taxpayer,” (2) she does not have “taxable income,” and (3) Idaho does not have jurisdiction to require her to file and pay income tax.

### LAW AND ANALYSIS

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

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. “Tax protestors” 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 Petitioner asserts some of the same arguments discussed by Judge Easterbrook. She believes her tax obligation has somehow been eliminated despite the fact that she lives in Idaho and earned a living in Idaho. Simply stated, the Petitioner's arguments lack a reasonable basis in fact or law.

1. Petitioner is a "taxpayer"

The Petitioner asserts that she is not a "taxpayer." Idaho has the authority to tax the Petitioner. See People of State of 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. Domicil itself affords a basis for such taxation. 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." Shaffer v. Carter, 252 U.S. 37, 52 (1920) "[J]ust 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."

Idaho Code § 63-3024 imposes an income tax on every resident individual measured by their taxable income. Resident is defined in Idaho Code § 63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who is domiciled in this state. The Idaho Legislature has clearly set forth that the Idaho income tax applies to residents of this state. The Petitioner resides in Idaho and is subject to the jurisdiction of Idaho.

2. Petitioner has “taxable income”

The Petitioner asserts that she has no taxable income. As the Court stated in Eisner v. Macomber, 252 U.S. 189 (1920), the term “income” is defined for income tax purposes as gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. One further note on the definition of the word “income.” The Court in Merchant's stated, “In determining the definition of the word ‘income’ thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definitions quoted, what it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution.”

The Supreme Court of Idaho also stated that the terms used in statutes are given their plain, ordinary meaning. The plain, ordinary meaning of a term can be found in the dictionary definition of the term. See Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993). Webster’s New Collegiate Dictionary defines income as a gain or recurrent benefit usually measured in money that derives from capital or labor.

Contrary to what the Petitioner may be asserting, the courts have consistently held that wages or compensation for labor is income for income tax purposes. Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986); United States v. Lawson, 670 F.2d 923 (10th Cir. 1982); United States v. Buras, 633 F.2d 1356 (9th Cir. 1980); Mitchell v. Agents of State, 105 Idaho 419, 425 (1983); State v. Staples, 112 Idaho 105, 107 (Ct. App. 1986); Parsons v. Idaho State Tax Com’n, 110 Idaho 572, 575 (Ct. App. 1986).

Idaho Code § 63-3022 defined the term “taxable income” to mean “taxable income” as defined in section 63 of the Internal Revenue Code, adjusted as provided in the Idaho Income Tax Act. Section 63 of the Internal Revenue Code defines taxable income as “gross income minus the deductions allowed under this chapter.” Section 61 of the Internal Revenue Code provides that, except as otherwise provided in Subtitle A of the Internal Revenue Code, “gross income means all income from whatever source derived.” Idaho has incorporated these provisions in its tax laws.

Idaho Code § 63-3002. Declaration of intent. It is the intent of the legislature by the adoption of this act, insofar as possible to 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; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

As incorporated into the Income Tax Act by Idaho Code § 63-3002, individuals are subject to Idaho income tax on their income from all sources unless express federal or state exemptions, adjustments, or limitations apply. The Petitioner has not provided any information to establish that her income is exempt under the Internal Revenue Code or under any other law.

3. Idaho Has Jurisdiction to Tax Individuals in Idaho

The Petitioner also claims that the state of Idaho is without the power or authority to impose a tax on her. The Petitioner's argument is incorrect.

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) discussed above.

## CONCLUSION

The Petitioner failed to file returns for tax years 2003 through 2006. The Bureau, using federal information consisting of W-2 wage information, calculated income for all of the years. The Petitioner resides in Idaho and claims she is not required to file and pay income taxes based upon unfounded and illogical arguments. The Petitioner does not provide a valid reason to avoid payment and instead presents arguments and reasons that lack a reasonable basis in law or fact. The Commission repeatedly in the past has addressed and rejected similar arguments and will do so now as required by law.

It is well settled in Idaho 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. Since the taxpayer has failed to meet this burden, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

As noted above, the Petitioner also has informed the Commission several times that “the information presented to your office is not a protest, the undersigned Secured Party is simply presenting the evidence.” The tax liability asserted may also be collected because the Peitioner has failed to timely protest the NODD. Idaho Code § 63-3045.

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 taxpayer's 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 November 1, 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$2,598	\$650	\$771	\$ 4,019
2004	3,250	813	770	4,833
2005	3,418	855	604	4,877
2006	1,856	464	211	<u>2,531</u>
			TOTAL DUE:	<u>\$16,260</u>

Interest is calculated through November 30, 2008.

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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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.  
  
\_\_\_\_\_