

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 19577
[Redacted],)
)
) DECISION
Petitioner.)
_____)

On June 29, 2006, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination [Redacted] (taxpayer) proposing income tax, penalty, and interest for the taxable years 1999 through 2004 in the total amount of \$58,863. In conjunction with the Notice of Deficiency Determination sent to the taxpayer, the Bureau also sent a Notice of Deficiency Determination to [Redacted], the taxpayer's spouse, reporting his share of the community income. See Tax Commission Decision Docket No. 19578.

On August 14, 2006, the taxpayer filed a timely appeal and petition for redetermination. [Redacted]The Tax Commission, having reviewed the file, hereby issues its decision.

In researching the Tax Commission's records, the Tax Discovery Bureau (Bureau) found that the taxpayers stopped filing Idaho individual income tax returns after filing their 1998 return. The Bureau sent the taxpayers a letter asking about their requirement to file Idaho income tax returns. [Redacted].

The Bureau researched the matter further and determined the taxpayers did not live within the boundaries of their tribe's federally recognized reservation. [Redacted]. The Bureau prepared married filing separate income tax returns using the community property split of income method for the taxpayers and sent each of them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination [Redacted]. They stated further that in 1979 the U.S. Supreme Court ruled that their tribe was a ward of the federal government and

that they saw no reason they should pay income tax or any other tax until their tribe's land claim was settled. The taxpayers also stated that Article 1, section 2 of the Constitution of the United States of America states that Indians are not taxed.

The Bureau referred the matter for administrative review. The Tax Commission reviewed the taxpayers' case and sent them a letter giving them two alternative methods for redetermining the Notices of Deficiency Determination. The taxpayers chose to have a hearing to present additional information in support of their appeal.

At the hearing, the taxpayers stated that the Supreme Court ruled that their tribe was a ward of the Federal government. They stated that their tribe was in litigation with the Federal government over the rights to their tribal ancestral land. They stated where they live [Redacted], and therefore their income is exempt from Idaho income tax. The taxpayers provided letters and articles expounding on the U.S. government's treatment [Redacted]. The taxpayers' basic argument is [Redacted]at no time relinquished title to their lands and have steadfastly refused any payment as compensation for their territory.

The issue in this case is whether the land claimed [Redacted] is within their aboriginal territory qualifies in the determination of exempt income from reservation sources. Idaho Income Tax Administrative Rule IDAPA 35.01.01.033 subsection .02 states:

An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxed on income within the reservation.

a. Income derived outside a federally recognized Indian reservation is not exempt.

b. Income derived within a federally recognized Indian reservation by an individual who is not an enrolled member of a federally recognized Indian tribe is not exempt.

[Redacted]. In total, over 80 million acres of land. The taxpayers claim [Redacted]one never relinquished this land or accepted payment from the federal government.

In Northwestern Bands of Shoshone Indians v. United States, 95 Ct. Cl. 642 (1942), the plaintiff bands of the Shoshone tribe sought to recover \$15 million for the unlawful taking of their lands as a violation of the 1863 Box Elder Treaty. The Court, however, disagreed with the Shoshone in that they were not entitled to recover under the 1863 Box Elder Treaty. The Shoshone appealed that decision to the United States Supreme Court. The Supreme Court in Northwestern Bands of Shoshone Indians v. United States, 324 U.S. 335, 65 S. Ct. 690 (1945), affirmed the Court of Claims agreeing that the 1863 Box Elder Treaty did not acknowledge Indian title to the lands [Redacted]. However, this did not [Redacted] claim to the lands in question.

In 1946, Congress adopted the Indian Claims Commission Act. This Act created a Commission and granted it jurisdiction to render damage awards to the Indian tribes/nations for the taking of aboriginal title to their land, among other wrongs. In 1951, the Te-Moak Band of Western Shoshone sought compensation for the loss of their aboriginal title to lands in the western United States. The Indian Claims Commission in 11 Ind. Cl. Comm. 387 (1962) heard the claim and issued a decision in 1962 stating,

The Commission concludes that the Shoshone Tribe was a land-using entity composed of the bands previously discussed herein which held Indian title to the lands described in Finding of Fact No. 20 until said lands were ceded to the United States by the Treaty of July 3, 1868, 15 Stat. 673, 11 Kapp. 1020. The Commission also concludes that the Lemhi Tribe, the Goshute Tribe or identifiable group, and the Western Shoshone identifiable group were land-using entities which respectively, held Indian title to the lands described in Findings of Fact Nos. 21, 22 and 23, and that said Indian title was acquired by the United States from these three aforementioned land-using entities without the payment of compensation therefor and said land-using entities are entitled to recover under Section 2, Clause (4) of the Indian Claims Commission Act.

The Indian Claims Commission stated the Shoshone Nation's claim to the land was extinguished and awarded \$26 million in compensation. The Court of Claims affirmed the Indian Claims Commission's decision and the award was certified to the General Accounting Office. Accordingly, an appropriation of the amount of the award was then deposited for the Shoshone Nation in a trust account in the United States Treasury. See United States v. Dann, 470 U.S. 39, 105 S. Ct. 1058 (1984). The deposit of the award in the trust account constituted payment to the Shoshone for the taking of their lands. United States v. Dann, supra.

The taxpayers stated they are wards of the federal government. They stated that until their tribe's land claim is settled they see no reason to pay income taxes or any other tax.

As stated above, it appears the land claim by the Shoshone Nation has been decided and the Shoshone was awarded monetary compensation for the extinguishment of their aboriginal title to the land. However, the taxpayers claim there has been no payment and the majority of the tribal members were not involved and disagree with the decision of the Indian Claims Commission. The taxpayers stated the issue is far from being settled.

In Western Shoshone Legal Defense & Educ. Ass'n. v. United States, 531 F.2d 495, 209 Ct. Cl. 43 (1976), the United States Court of Claims heard an appeal to stay claim proceedings before the Indian Claims Commission for the taking of land and to present an amended claim. The Court dismissed the appeal on the basis that the appellants waited over 39 years before seeking to participate in the claim proceedings, which it was fully aware of and opposed to and did not present an excuse for such delay. The Court stated there was no evidence of fraud or collusion on the part of the tribal organization that was participating in the proceedings as the Indians' exclusive representative but only a dispute between appellants and its supporters and the representative over the proper strategy to follow in the claim proceedings.

The Congress of the United States established the Indian Claims Commission to deal with the claims of the wrongs perpetrated against the American Indian. The Commission was to settle all claims through adjudication once and for all so that there would not be perpetual claims against the United States. See Indian Claims Commission Act section 22(a), ch. 959, 60 Stat. 1049, 1055 (1946). The Te-Moak Band of the Western Shoshone filed a claim in 1951 for the taking without compensation of a large acreage in the western states. This claim was considered for and on behalf of the Shoshone Nation. The claim was to discharge "all claims and demands touching any of the matters involved in the controversy." Section 22(a) Indian Claims Commission Act. Therefore, since tribal title has been extinguished and paid pursuant to the Indian Claims Commission Act, no remnants of that tribal title survive thereafter in the individual tribal members. United States v. Dann, 873 F.2d 1189 (1989).

Accordingly, pursuant to IDAPA 35.01.01.033.02, the only income exempt from Idaho income tax is the income derived within a federally recognized reservation earned by an enrolled member of a federally recognized Indian tribe who lives on the Indian reservation. The taxpayers do not live within a federally recognized reservation, and their income is generally earned outside the reservation. Therefore, the taxpayers' income is not exempt from Idaho taxation.

The taxpayers did not provide anything to show that the Bureau's tax computation was in error. In Idaho, a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayers have not met their burden. The Tax Commission recognizes that the taxpayers should and probably do have business expenses related to the income earned. However, deductions are

a matter of legislative grace, and the taxpayer must show that he comes within the terms of the applicable statute. New Colonial Ice Co. v. Helvering, 292 US. 435, 54 S.Ct. 788 (1934). Since the taxpayers have also failed to substantiate any deductions, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated June 29, 2006, 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>
1999	\$1,769	\$ 442	\$1,235	\$ 3,446
2000	7,174	1,787	4,481	13,442
2001	9,144	2,286	4,983	16,413
2002	7,998	2,000	3,743	13,741
2003	7,765	1,941	3,135	12,841
2004	6,259	1,565	2,195	<u>10,019</u>
			TOTAL DUE	<u>\$69,902</u>

Interest is calculated to December 16, 2009.

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 included with this decision.

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
