

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21227
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

FACTUAL AND PROCEDURAL BACKGROUND

This is an individual income tax case. The Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) mailed a letter dated February 22, 2008, to [Redacted] (Petitioner) notifying her that the Commission had obtained information that indicated she needed to file Idaho Individual Income Tax Returns for the 2006 taxable year. Petitioner did not respond to this letter.

The Bureau issued a Notice of Deficiency Determination (NODD) dated April 28, 2008, to Petitioner, for an unpaid individual income tax liability in the amount of \$66,951 for the 2006 taxable year. The taxes were based upon [Redacted] 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. This notice was sent by certified mail.

The certified mail was returned as being “unclaimed.” The Bureau sent the NODD again on May 22, 2008, by regular mail.

In response, the Petitioner mailed documentation dated June 16, 2008, which the Commission treated as a timely petition for redetermination. The documentation included an Idaho individual income tax return asserting zero income, as well as substitute W-2 forms and corrected 1099MISC forms which also asserted zero income. The documentation also included

many arguments asserted by tax protestors. This information did not reflect what was reported in the [Redacted] data obtained by the Commission.

The Bureau mailed Petitioner a letter dated June 19, 2008, acknowledging that a protest had been filed and that the matter was being transferred to the legal department of the Commission. The Bureau also included all 1099, 1098, and W-2 forms issued to the Petitioner for the 2006 taxable year.

The legal department sent a letter to the Petitioner dated February 12, 2009. The Petitioner, through a power of attorney, communicated with the Commission later in February 2009. Information from the Petitioner supporting the protest was received on March 26, 2009, as well as in April and May 2009. The Petitioner continued to assert arguments not based in fact or law.

The Commission has reviewed the files, is advised of their contents, and now issues this decision.

PROTESTED ISSUES AND ANALYSIS

Petitioner denies an income tax liability with Idaho. Petitioner presents many tired and worn arguments incorrectly citing constitutional and statutory provisions in support of her protest. Among these arguments are the usual claims that she does not have any “income” and that she is not a “taxpayer.”

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 (C.A. 7 (Ind.) 1986),

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 protestors 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 similar arguments as 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 are not supported by fact or law.

Idaho Code §63-3002 provides what is taxable income as follows:

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 petitioner 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.

Petitioner has income and is required to file and pay taxes for the taxable year 2006. 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 beem [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

Petitioner failed to file a return for taxable year 2006 and then filed an incorrect return and accompanying forms. The Bureau, using [Redacted] information, calculated income for the 2006 taxable year. Petitioner resides in Idaho. Petitioner claims she is not required to file and pay income taxes based upon unfounded and illogical arguments. Petitioner does not provide sufficient support for her assertions or a valid reason to avoid the payment of Idaho individual income taxes asserted in the NODD. 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 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 Petitioner has failed to meet this burden, the Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau also added interest, which interest will continue to accrue pending payment of the tax liability pursuant to Idaho Code § 63-3045(6), and penalty to the Petitioner's tax deficiency. The Commission finds those additions appropriate as provided for in Idaho Code §§ 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated April 28, 2008, 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>
2006	\$50,152	\$12,538	\$7,877	\$70,567

Interest is calculated through September 30, 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 enclosed.

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.
