

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 21256
[REDACTED],)
) DECISION
Petitioner.)
_____)

PROCEDURAL AND FACTUAL BACKGROUND

[Redacted] (petitioner) filed individual income tax returns on October 15 and 25, 2006, for taxable years 2001 through 2005. On September 5, 2007, the petitioner then filed returns for the same years claiming zero income. The staff of the Tax Discovery Bureau (TDB) sent a letter dated February 25, 2008, requesting information relating to the amended zero returns. The petitioner replied by sending a letter dated March 22, 2008, however, the petitioner failed to provide any documentation to support or verify the amended zero returns.

The TDB staff sent a Notice of Deficiency Determination (NODD) dated May 1, 2008, to the petitioner proposing income tax, penalty, and interest in the amount of \$16,360 for the taxable years 2001 through 2005. The NODD was based upon information obtained [Redacted] as of March 26, 2008. [Redacted].

On July 3, 2008, the petitioner delivered a protest of the NODD to the Tax Commission. The Tax Commission treated this protest as a timely appeal and petition for redetermination of the NODD. The matter was then assigned to the legal department for review. The legal department sent a hearing rights letter dated October 2, 2008, to the petitioner. The petitioner responded and chose to meet with a Commissioner for an informal hearing. The informal hearing was held on January 6, 2009, at the Tax Commission. After the informal hearing, the

petitioner agreed to present further information in support of the protest. The petitioner presented further information which was received by the Tax Commission on January 20, 2009.

The petitioner resided in Idaho during the taxable years in question. The petitioner presents many tired and incorrect arguments commonly raised by tax protestors. The petitioner also fails to provide supporting and confirming documentation for the amended zero returns.

Income

The petitioner asserts that Congress has only authorized assessment of taxes against income derived from tobacco and distilled spirits. The petitioner has also argued that because he is not a federal employee and does not own a federal business, he is not subject to income tax. These assertions are incorrect. As the Court stated in Eisner v. Macomber, 252 U.S. 189 , 207, 40 S. Ct. 189, 207 (1920), the term “income” is defined for income tax purposes as gain derived from capital, labor, or both combined and includes profit gained through the sale or conversion of capital assets.

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.

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. Idaho Code § 63-3002 (Emphasis added).

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 his income is exempt under the Internal Revenue Code or under any other law.

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 direct tax on him. 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

In conclusion, after the hearing, the petitioner presented documentation of what he believes are examples of individuals receiving refunds based upon similar arguments he has made to the Tax Commission. Each case before the Tax Commission is decided on its own merits and petitioner's case will be decided on its own merits.

The petitioner uses the arguments above and similar tired and incorrect tax protestor arguments. 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 petitioner to show that the tax deficiency is erroneous. Id. Since the petitioner 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.

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 Tax Commission modifies the penalty to an Idaho Code § 63-3046(a) penalty and, with this modification, finds the penalty and interest appropriate as provided for in Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated May 1, 2008, is hereby APPROVED and AFFIRMED as MODIFIED, and MADE FINAL.

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

<u>YEAR</u>	<u>REFUND CLAIMED</u>	<u>REFUND ALLOWED</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$30	\$30	\$ 0	\$ 0	(\$ 5)	(\$ 35)
2004	30	0	1,220	61	337	1,618
2003	10	0	1,693	85	569	2,347
2002	10	0	0	0	0	0
2001	10	0	5,991	300	2,715	<u>9,006</u>
				TOTAL DUE:		\$12,936

Interest is calculated through August 30, 2009.

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.
