

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21516
[Redacted])	
Petitioner.)	DECISION
)	
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PROCEDURAL AND FACTUAL BACKGROUND

[Redacted] (petitioner) failed to file individual income tax returns for taxable years 1998 through 2006. The staff of the Tax Discovery Bureau (TDB) notified the petitioner of the missing returns. The petitioner responded by sending a copy of the letter and writing in the top right corner, "I do not consent to these proceedings and I do not accept this offer and never intended to."

On approximately September 4, 2008, the TDB staff sent a Notice of Deficiency Determination (NODD) to the petitioner proposing income tax, penalty, and interest in the amount of \$16,162 for the taxable years 1998 through 2006. The NODD was based upon information obtained from the Internal Revenue Service.

In a letter dated October 12, 2008, the petitioner objected to the spelling of his name in all caps along with other arguments lacking basis in the law. 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 February 3, 2009, to the petitioner. The Tax Commission received a response on February 27, 2009. The response was of a similar nature as the previous correspondence. The petitioner essentially claims the Tax Commission lacks authority to issue the NODD.

The Tax Commission received no further correspondence from the petitioner.

Based upon driver's license and fish and game license information, 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 has presented no evidence contrary to the income information [Redacted].

Income

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.

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

Taxing Authority

The state of Idaho has the power or authority to impose a tax on the petitioner. 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).

CONCLUSION

The petitioner uses the arguments above and similar tired and incorrect tax 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 added interest, which 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 finds those additions appropriate as provided for in Idaho Code §§ 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated September 4, 2008, is 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	\$1,015	\$254	\$160	\$ 1,429
2005	1,041	260	229	1,530
2004	1,064	266	298	1,628
2003	1,080	270	367	1,717
2002	1,090	273	429	1,792
2001	1,114	279	510	1,903
2000	1,197	299	640	2,136
1999	1,201	300	738	2,239
1998	1,168	292	803	<u>2,263</u>
			Total Due:	<u>\$16,637</u>

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.
