

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NOS. 23153 & 23367
)
)
Petitioner.) DECISION
)
_____)

This decision addresses two issues and combines two dockets and three Notices of Deficiency Determination (NODD). The Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) first contacted [Redacted] (taxpayer) concerning non-filed returns for taxable years 1999 through 2006. When the taxpayer did not submit returns, the Bureau prepared returns for him.

The taxpayer filed returns for taxable years 2007 and 2008. However, after reviewing the returns, the Bureau issued a second NODD to the taxpayer proposing adjustments to the returns for taxable years 2007 and 2008. The final NODD, which resulted in the second docket, was issued by the Revenue Operations Division (Revenue Operations) after the taxpayer's 2009 return was submitted for processing. Revenue Operations recognized, as did the Bureau, forms and jargon attached to the 2007 through 2009 returns as those similar to various tax-protestor movements. Both departments forwarded their matters for administrative review.

The Bureau mailed a letter dated April 7, 2009, to the taxpayer notifying him that the Commission had information that indicated he may need to file Idaho individual income tax returns for the taxable years 1999 through 2006. The taxpayer responded by stating that he was not required to file because he either had a refund coming or did not work in Idaho during the years in question. Because the Bureau had income information that indicated the taxpayer did work in Idaho, as well as other states, the Bureau asked the taxpayer to fill out a domicile

questionnaire to help determine the taxpayer's residency. Based on the taxpayer's response and the information available to the Bureau, the Bureau determined the taxpayer did meet the filing requirements and prepared returns for him. The Bureau issued an NODD dated March 19, 2010, to the taxpayer proposing tax, penalty, and interest in the total amount of \$4,179 for taxable years 1999 through 2001 and taxable year 2006. The taxpayer protested the notice claiming he was not required to file because he was either due a refund or was not working in Idaho during those years.

The taxpayer filed his 2007 and 2008 Idaho individual income tax returns. The returns reported no income but claimed a refund of \$84 and \$1,667, respectively. Attached to the taxpayer's returns were [Redacted] forms 4852 claiming that he received incorrect W-2 Wage and Tax Statements from all his employers, those in Idaho ([Redacted]) and the other states in which he worked. The Commission reviewed the W-2s [Redacted] Incorporated and [Redacted] submitted to the Commission and found that the taxpayer was claiming that both companies incorrectly reported that he received wages. However, the taxpayer agreed that [Redacted] did withhold from his wages for state income tax.

The Bureau reviewed the returns and issued a second NODD dated March 19, 2010, proposing additional tax, penalty, and interest for taxable years 2007 and 2008 in the total amount of \$3,777. The taxpayer protested the Bureau's determination and provided several Internal Revenue Code (IRC) citations to support his position. The taxpayer stated he had no wages as the term is defined in IRC section 3401 because he was not an employee as it is defined in IRC section 3401. Therefore, the taxpayer had no wages that were taxable by the state of Idaho.

The taxpayer timely filed his 2009 Idaho individual income tax return which claimed a refund in the amount of \$1,593 and also included a federal form 4852, which resulted in the third NODD dated June 15, 2010, proposing additional tax and interest in the total amount of \$78.21.

The Commission reviewed the entire case and sent the taxpayer a letter giving him the opportunity to present his position through one of two methods adopted by the Commission. The taxpayer did not request a hearing nor did he exercise his opportunity to provide additional information for consideration.

The taxpayer's protest of the NODDs, issued for taxable years 2007 through 2009 centers on the premise that he is not an employee, his employers are not employers, and therefore, his wages are not taxable income. The taxpayer supports his argument with IRC sections 3121 and 3401.

The taxpayer argues he is not an employee as defined in IRC section 3401 because he has never received any federally connected money for any federally connected service and his private sector earnings are not taxable. The taxpayer cited IRC sections 3121 and 3401 for the definition of wages earned by employees. The taxpayer's logic surmises that since he is not an employee, his wages are not taxable income.

The taxpayer's argument has been examined by the courts and has been rejected as being without merit and frivolous. The argument that the taxpayer is not an employee is based on a misinterpretation of IRC section 3401 which imposes the responsibility of employers to withhold tax from wages. That section establishes the general rule that wages include all remuneration for services performed by an employee for his employer. Section 3401(c) defines employee and states that the term "includes an officer, employee or elected official of the United States, a State, or any political subdivision thereof" The taxpayer believes that this section specifically

identifies the only employees required to pay a tax, and since he is not employed by the federal government, the state, or any other governmental body, he is not an employee subject to the income tax. However, the purpose of this subsection is not to specify every possible employee or define the employees that are required to pay income tax. The purpose of this subsection is to include, for withholding income tax from wages, individuals employed by the government.

The notion that IRC section 3401(c) is exclusive is refuted by IRC section 7701(c). IRC section 7701(c) states that the use of the word “includes,” when used in a definition in the IRC, “shall not be deemed to exclude other things otherwise within the meaning of the term defined.” Thus, the word “includes,” as used in the definition of employee, is a term of enlargement, not of limitation. Clearly, federal employees and officials are part of the definition of employee, but it also pertains to all other employees, public and private. *See* United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985); Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986); Peth v. Breitzmann, 611 F. Supp. 50, 53 (E.D. Wis. 1985); and Pabon v. Commissioner, T.C. Memo. 1994-476, 68 T.C.M. (CCH) 813, 816 (1994). IRC section 3121, cited by the taxpayer, contains another definition of employee that is significantly broader, which the taxpayer chose to ignore.

Nevertheless, a key point missed by the taxpayer in citing IRC sections 3121 and 3401 is that each subsection starts the definition of employee with, “For purposes of this chapter . . .” This phrase limits the term defined in the section to the subject matter of the chapter. In the case of IRC section 3121, it is chapter 21 dealing with the Federal Insurance Contributions Act, and for IRC section 3401, it is chapter 24 dealing with the Collection of Income Tax at Source, in other words, withholdings. Therefore, if the taxpayer claims that he is not an employee as defined in IRC section 3401, he is claiming not to be subject to withholding on his wages.

The taxpayer's arguments have not persuaded the Commission that the changes to his 2007, 2008, and 2009 Idaho income tax returns were not correct. The taxpayer had income, and he was required to report that income to Idaho. Therefore, the Commission finds the adjustments appropriate and hereby upholds the NODD dated March 19, 2010, for taxable years 2007 and 2008 and the NODD dated June 15, 2010, for taxable year 2009.

The Commission also upholds the NODD dated March 19, 2010, for taxable years 1999 through 2006. The NODD was based on the information received [Redacted] and those records retained by the Commission.

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 Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The taxpayer has failed to file Idaho individual income tax returns for the years in question. Absent information to the contrary, the Commission accepts the Bureau's calculation of Idaho income tax, penalty, and interest for taxable years 1999, 2000, 2001, and 2006.

Interest and penalty were added pursuant to Idaho Code §§ 63-3045 and 63-3046. The Commission reviewed those additions and found them proper and in accordance with Idaho Code.

WHEREFORE, the Notice of Deficiency Determination dated March 19, 2010, and the Notice of Deficiency Determination dated June 15, 2010, are 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 | \$ 812 | \$203 | \$564 | \$1,579 |
| 2000 | 769 | 192 | 473 | 1,434 |
| 2001 | 394 | 99 | 212 | 705 |
| 2006 | 383 | 96 | 181 | 660 |
| 2007 | 628 | 31 | 105 | 764 |
| 2008 | 2,754 | 138 | 284 | 3,176 |
| 2009 | 78 | 0 | 4 | <u>82</u> |
| | | | TOTAL DUE | <u>\$8,400</u> |

Interest is calculated through June 7, 2011.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.
