

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 23385
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

**HISTORY**

On August 2, 2010, the Idaho State Tax Commission’s Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Taxpayer) for Idaho income tax for taxable years 2008 and 2009. This NODD was based on income information from [Redacted] forms because the Taxpayer reported zero taxable income for those years.

When filing returns for taxable years 2008 and 2009, the Taxpayer utilized substituted W-2 forms because, he claimed, his employer provided incorrect [Redacted] forms in that these forms showed his pay was taxable. According to the explanation provided by the Taxpayer on his self-corrected [Redacted] forms, his pay does not fall within the definition of wages found in Internal Revenue Code (IRC) sections 3401(a) and 3121(a) and, therefore, his pay is not taxable as income.

The Taxpayer filed a letter of protest with the Idaho State Tax Commission (Commission) on September 24, 2010, claiming he does not meet the [Redacted] definition of “employee” within IRC § 3401(c), and because Idaho Code § 63-3018 refers to the IRC for a definition of “employee,” he does not have any taxable wages for the years in question. In that letter, the Taxpayer also argued that because the [Redacted] refunded overpaid 2008 taxes based on his “corrected” W-2 forms, and because Idaho “strictly follows [REDACTED] guidelines in

this area,” the NODD is incorrect. A notice from [Redacted] that the Taxpayer had overpaid [Redacted] taxes for taxable year 2008 was attached to the protest letter.

The TDB acknowledged the Taxpayer’s protest in a letter dated September 27, 2010, and requested he provide his 2008 and 2009 income tax returns, W-2 forms showing credit for Idaho withholding taxes, and any [Redacted] correspondence he received for the pertinent years. The Taxpayer responded to this request on October 8, 2010, with a letter reiterating his previous arguments, and attached his 2009 state and federal returns and substituted W-2 forms.

On March 11, 2011, the Commission sent the Taxpayer a letter explaining his hearing rights and the process involved in scheduling a hearing. The Taxpayer was given until April 4, 2011, to respond. On March 14, 2011, the Taxpayer sent a letter acknowledging receiving an “audit notice” and requesting that, because of work travel, he be given until April 29, 2011 to gather information to submit. Since then, however, the Taxpayer has not sent any other documents, nor communicated with the Commission in any other manner.

#### ARGUMENT

This is a tax protestor case. The Taxpayer seems to be following the old and tired argument that wages are not taxable as income, but he fails even to coherently argue that erroneous stance. As near as can be deciphered, he argues that he is not subject to Idaho income tax because Idaho follows the federal definition of “employee,” and he does not read certain Internal Revenue Code sections, identified below, to classify him as such. He believes, therefore, that if he is not an employee, he has no “wages” to be reported or withheld, and so is not liable for income taxes. The Taxpayer is wrong, both in his reading of those code sections and in using them to assess his liability for income taxation.

Idaho Code § 63-3026 identifies the Idaho taxable income as being the amount produced by making appropriate adjustments under the provisions of Idaho Code § 63-3022 to a resident's taxable income. Idaho Code § 63-3011B defines taxable income as, "federal taxable income as determined under the Internal Revenue Code." IRC § 63 defines taxable income as "gross income minus the deductions allowed under this chapter." IRC § 61 provides that, except as otherwise provided in Subtitle A of the Internal Revenue Code, "gross income means all income from whatever source derived." Thus, as incorporated into the Idaho Income Tax Act by Idaho Code §§ 63-3022, 63-3026, and 63-3011B, a taxpayer is subject to Idaho income tax on income from all sources, unless express federal or state exemptions, adjustments, or limitations apply. The Taxpayer has not provided any information to establish that his income is exempt under the Internal Revenue Code or under any other law.

In fact, the taxpayer makes no mention of any of the state or federal code sections pertinent to income tax liability or exemptions, but instead misapplies and misreads other, non-applicable, state and federal code sections to argue he has no taxable income. Idaho Code § 63-3018 states, "[t]he term "employee" means "employee" as defined in the Internal Revenue Code." The taxpayer uses this state code section to reference IRC § 3401(c), which he interprets to indicate he is not an employee. He then makes the illogical leap that, because he is not an employee, he has no income for Idaho income tax purposes. IRC § 3401(c) says:

(c) Employee. – For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

The taxpayer is mistaken in his belief that that code section in any way relieves him from Idaho income tax liability. First, IRC § 3401 is part of the chapter of federal code that governs

withholding tax on employee wages, not liability for income taxes. Idaho income tax liability flows through Idaho Code Title 63, Chapter 30, and IRC §§ 61 and 63, in the manner described hereinabove. Second, even if IRC § 3401 is read to control income tax liability, the Taxpayer is an employee under the statute. IRC § 3401(c) contains inclusive language identifying some types of wage earners, but does not exclude all others, and courts have conclusively determined that wage earners such as the taxpayer are “employees” under that statute. *See: United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985); *Peth v. Breitzmann*, 611 F.Supp. 50, 53 (E.D.Wis. 1985); *Chamberlain v. Kryzstof*, 617 F.Supp. 491, 495-96 ( N.D.N.Y. 1985); *In Re Weatherly*, 169 B.R. 555, 560 (E.D.Pa. 1994).

The Taxpayer is similarly mistaken when he relies on federal definitions of “wages,” found in IRC § 3401(a) in the chapter governing withholding, and IRC § 3121(a) in the chapter governing employment taxes, to determine his income tax liability. The taxpayer’s claim that his wages are not income subject to tax is totally devoid of merit. *See: Coleman v. Commissioner*, 791 F.2d 68, 70 (1986); *United States v. Lawson*, 670 F.2d 923 (10th Cir. 1982); *United States v. Burus*, 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 Commission*, 110 Idaho 572, 575 (Ct. App. 1986).

Information gathered by the TDB demonstrates the Taxpayer received wages and other income during the 2008 and 2009 tax years that was subject to Idaho income tax. The Taxpayer’s status as an “employee” for purposes of federal withholding is irrelevant to his Idaho income tax liability, as is whether or not his pay is considered “wages” for federal withholding or employment taxes.

## CONCLUSION

Courts in Idaho have determined that an NODD issued by the Idaho State Tax commission is presumed to be correct, and the burden is on the taxpayer to show that the tax deficiency is erroneous. 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 information submitted by the Taxpayer in support of his protest has been reviewed. The Taxpayer has failed to present any legal or factual information to dispute the basis of the NODD and therefore failed to meet his burden to show that the NODD is incorrect. The TDB added interest and penalty to the Taxpayer's Idaho tax liability in accordance with Idaho Code §§ 63-3045 and 63-3046. The Commission finds the addition of interest appropriate; however, the Commission did not find any support for the fraud penalty added by the Bureau. Therefore, the Commission reduced the penalty to the negligence, failure to pay, and substantial understatement penalties identified in Idaho Code § 63-3046(a), (c), and (d).

THEREFORE, the Notice of Deficiency Determination dated August 2, 2010, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED 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>
2008	\$ 551	\$138	\$ 75	\$ 764
2009	1,234	309	106	<u>1,649</u>
			TOTAL DUE	<u>\$2,413</u>

Interest for the above deficiency is calculated through April 2, 2012.

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.

\_\_\_\_\_