

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 23926
)
)
Petitioner.) DECISION
)
_____)

HISTORY

On August 3, 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 1999, 2004, 2005, 2007, and 2008 in the amount of \$31,277. This NODD was based on income information from the Internal Revenue Service and Idaho Department of Labor because the Taxpayer did not file returns for any of those years.

On October 1, 2010, the Idaho State Tax Commission (Commission) received a notarized document from the Taxpayer titled “PETTITION [SIC] FOR REDETERMINATION AND CONSTRUCTIVE NOTICE AS PRESENTED BY AFFIDAVIT OF [Redacted] NOTICE TO AGENT IS NOTICE TO PRINCIPLE. NOTICE TO PRINCIPLE IS NOTICE TO AGENT.” This document, which the Commission considers to be a protest of the NODD, is twelve pages long and quotes federal and state codes, case law, the bible, legal dictionaries, and a multitude of legal maxims, both in Latin and English, in a manner consistent with rhetoric usually provided by tax protestors. This document also demands that the Commission prove with affidavits all claims against the Taxpayer and, in the alternative, threatens lawsuit against the Commission for a litany of claims including false imprisonment, racketeering, and “inland piracy.”

The Commission acknowledged the Taxpayer’s protest in a letter dated May 12, 2011, that also explained the taxpayer’s hearing rights and the hearing process. The Taxpayer

responded to the hearing rights letter on May 31, 2011, with another document, titled, “AND CONSTRUCTIVE NOTICE AS PRESENTED BY PRONOUNCEMENT OF [Redacted] NOTICE TO AGENT IS NOTICE TO PRINCIPLE. NOTICE TO PRINCIPLE IS NOTICE TO AGENT.” This document reiterated the same demands and threats as the October 1, 2011, document, however, it did not attempt any further explanation of facts or the Taxpayer’s stance and did not mention or allude to his hearing rights in any manner. The Commission has had no further communication with the Taxpayer and now moves forward with this decision.

DISCUSSION

As near as can be deciphered from the documents the Taxpayer submitted, the arguments he presents are nothing more than variations on common tax protestor themes which have been rejected time and again by state and federal courts across the country. Tax protestor themes have been addressed by numerous courts. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned:

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. Tax protesters 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 protesters 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.

Four primary tax protestor arguments are recognizable in the Taxpayer’s documents which this decision will address. The Taxpayer’s rambling communications identify many other nonsensical arguments why he is not liable for taxes, all standard tax protestor issues, that include: arguments about the plain meaning of common terms and their usage, that his name on the NODD is capitalized and, therefore, refers to someone else, that the Commission and the [Redacted] are fraudulently producing documents to extort money from him, and that not answering his written demands “by affidavit” contractually binds the Commission to agreeing

with them. These arguments are completely frivolous and so convoluted as to be un-answerable without further explanation, which the Taxpayer has failed to submit.

1. Wages Are Not Subject to Income Tax.

The Taxpayer mentions three avenues to conclude his reported earnings are not taxable income.

The Taxpayer's first and primary argument is that receipt of federal reserve notes (commonly known as dollars) is not income because federal reserve notes are not lawful money. In his October 1, 2011, document, the Taxpayer claims he has received no money, and presumably therefore, no income, because Idaho statute does not define "income," "money," or "\$," only "lawful money" and "legal tender" as set forth in Idaho Code § 63-201. Later in the same document, when describing the damages the Commission will be required to pay him unless it revokes the NODD, the Taxpayer defines a "US Dollar" as "a One Ounce Silver coin of .999 fine silver, or the equivalent par value. . ." The Taxpayer apparently questions the validity of federal reserve notes as legal tender for his tax debt when he claims, in the same document, "As most EVERYONE knows there is no lawful money! There is only "Federal Reserve Notes. . ." This particular frivolous argument has deep roots and an equally long history of rejection in the Courts. As noted in Parsons v. State, 113 Idaho 421, 745 P.2d 300 (Idaho App.,1987), "The cases are legion in which this issue has been asserted and summarily rejected." See Herald v. State, 107 Idaho 640, 691 P.2d 1255 (Ct.App.1984) (listing cases holding that federal reserve notes are *legal tender* and *lawful money*).

The Taxpayer's second argument seems to follow the standard tax protestor line of reasoning that "income" does not include wages because labor is traded in amounts equal to pay, so does not result in financial gain. This argument is also an old and tired tax protestor

argument, and 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).

The Taxpayer's third argument that his wages are not taxable references Internal Revenue Code (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. 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. Also, 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. Krysztof, 617 F.Supp. 491, 495-96 (N.D.N.Y. 1985); In Re Weatherly, 169 B.R. 555, 560 (E.D.Pa. 1994).

2. Idaho Does Not Have Authority to Collect Income Taxes.

While not clearly communicated, it seems by the volume of references on the point within the Taxpayer's documents that he argues Idaho income tax liability can only come from a contractual agreement between himself and the state. The right of states to tax income is well settled law. The United State Supreme Court has long recognized that the right to tax is a crucial attribute of state sovereignty. M'Culloch v. Maryland, 17 U.S 316, 428 (1819). The Idaho Supreme Court has followed that state income taxes are constitutional. Diefendorf v. Gallet, 51 Idaho 619 (1932).

Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his taxable income. Resident is defined in Idaho Code § 63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who is domiciled in this state. The taxpayer was domiciled during the years in question, and continues to be domiciled, in Idaho. 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, 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 information gathered by the TDB demonstrates the Taxpayer received wages and other taxable income in Idaho during the 1999, 2004, 2005, 2007, and 2008 taxable years.

The Taxpayer also questions the Commission's authority to issue an NODD based on the information it has regarding the Taxpayer. Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency.

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery hereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery

Subsection (2) of the same statute provides taxpayers with a hearing before the Commission to show why they believe a determination may be in error, before the determination becomes a tax assessment. The Taxpayer has declined an opportunity for a hearing by not timely requesting one and chose to disregard Idaho law by not paying taxes on his income for the pertinent years.

3. Taxpayer's "Sovereign" Status Excuses Him From Tax Liability.

When the Taxpayer refers to himself as a, "sovereign, sui juris, free white man," and claims he is not a "resident individual" but a "flesh and blood man who lives and breathes," he uses language consistent with the standard tax protestor "sovereign citizen" argument. An individual's claim of "sovereignty" in an attempt to avoid federal or state income tax is completely without merit and patently frivolous, and Courts have uniformly rejected this argument. United States v. Hanson, 2 F.3d 942, 945 (9th Cir. 1993); Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); United States v. Dawes, 874 F.2d 746, 750-751 (10th Cir. 1989); United States v. Studley, 783 F.2d 934, 937 & n.3 (9th Cir. 1986); Minovich v. Commissioner of Internal Revenue, 1994 T.C. Memo. 89.

Domicile itself affords a basis for a state's individual income tax. New York, ex rel Cohn v. Graves, 300 U.S. 308, 312-13 (1937). ("Enjoyment of the privileges of residence in the state and the attendant right to invoke the protections of its laws are inseparable from responsibility

for sharing the costs of government.") Domicile is identified when a person has a physical presence at a dwelling place, and the concurrent intent to make that place a permanent home. Kirkpatrick v. Transtector Systems, 114 Idaho 559, 562 (1988). The Taxpayer shows no evidence that he is not domiciled in Idaho. According to the information available to the Commission, the Taxpayer was a domiciliary of Idaho during the years pertinent to the NODD and therefore subject to state taxation of his income.

4. Burden of Proof.

The Taxpayer repeatedly demands that the Commission prove almost every basic fact involved in this case, including ridiculous requests to prove he is the right [Redacted], to prove the auditor involved in the case is a government agent, and to prove the NODD is not a falsified document. He claims multiple times that the Commission is lying about the facts of the case and forging documents. Many of the legal maxims quoted in the Taxpayer's documents are used to indicate that the Commission has a burden to prove its case against him.

However, 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 Taxpayer has failed to coherently introduce a realistic argument why the NODD is not accurate, or why the pertinent documentation on which the NODD is based should be suspect.

CONCLUSION

The information submitted by the Taxpayer in support of his protest has been reviewed. While he has argued in large volume many irrelevant issues, 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.

THEREFORE, the NODD dated August 3, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL as to taxable years 1999, 2004, 2005, 2007, and 2008.

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>
1999	\$11,073	\$2,768	\$8,052	\$21,893
2004	2,539	635	999	4,173
2005	2,072	518	690	3,280
2007	744	186	149	1,079
2008	1,405	351	191	1,947
			TOTAL DUE	<u>\$32,372</u>

Interest for the above deficiency is calculated through April 6, 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.
