

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25507
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated December 18, 2012, asserting Idaho income tax, penalty, and interest for taxable years 2006 through 2010 in the total amount of \$9,455. Petitioner does not believe the Tax Discovery Bureau (Bureau) took the proper steps when issuing its Notice of Deficiency Determination and, therefore, the Notice of Deficiency Determination is “UNLAWFUL with no force and effect of the LAW.” The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner has a history of not filing individual income tax returns with the state of Idaho. Because of that history, the Bureau continues to review Petitioner’s requirement to file Idaho individual income tax returns. In its most recent review, the Bureau found that Petitioner did not file Idaho individual income tax returns for taxable years 2006 through 2010. The Bureau sent Petitioner a letter inquiring about his requirement to file Idaho individual income tax returns. Petitioner responded by returning the Bureau’s letter marked with “Refused for Cause” along with his letter stating the Bureau’s letter did not have the required signature signed under penalties of perjury. Petitioner also asked how the Idaho Tax Commission could use class Tax 5 forms, W-2 and W-4, to fill out a class Tax 2 Form 1040, and was the Tax Commission asking him to commit perjury and fraud. In addition, Petitioner provided numerous exhibits from the [Redacted] Law Enforcement Manual III, a listing of tax returns and forms, portions of the [Redacted] Non-

Master File Pocket Guide, a copy of 26 USC 2642, Form W-9, documents regarding a collection process, and two copies of a report of incorrect information regarding W-4 and 1099 return information requirements.

The Bureau reviewed the information Petitioner provided and found it was similar to past arguments Petitioner made for not filing income tax returns. The Bureau prepared income returns for Petitioner based upon information obtained from the [Redacted] and W-2 Wage and Tax Statements and 1099 information sent to the Tax Commission. The Bureau sent Petitioner a Notice of Deficiency Determination, which Petitioner returned with the markings “Refused for cause”, along with a letter stating the Notice of Deficiency Determination was unlawful with no force and effect of the law. Petitioner also stated he was not making a request for redetermination because the one (Notice of Deficiency Determination) sent was legally flawed.

The Bureau acknowledged the Petitioner’s response as a protest to which, again, Petitioner returned marked with “Refused for cause” with another letter stating he did not request a redetermination because the Notice of Deficiency Determination was missing the required signature signed under penalties of perjury as required by law.

The Bureau referred the matter for administrative review and the Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. And as before, Petitioner returned the Tax Commission’s letter marked with “Refused for cause” along with a letter stating he was unable make a legal determination about the Tax Commission’s presentment because it was improperly signed. Petitioner stated again that the Determination was unlawful with no force and effect of the law. Petitioner stated Tax Commission employees have conspired to defraud him using documents without the required signature. Petitioner stated again, that he did not request a redetermination and that he did not file a

tax protest with the Tax Commission. Seeing that Petitioner would likely continue to “Refuse for cause” and use the same tax protester rhetoric to anything the Tax Commission would send him, the Tax Commission decided the matter based upon the information available.

LAW AND ANALYSIS

Idaho Code section 63-3030 states that every resident individual that is required to file a [Redacted] return under Internal Revenue Code (IRC) section 6012(a)(1) is required to file an Idaho income tax return. IRC section 6012 states that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. Petitioner’s reported W-2 statements exceeded that amount for each of the years in question. Accordingly, Petitioner should have filed income tax returns for 2006, 2007, 2008, 2009, and 2010.

Petitioner refused to acknowledge anything the Bureau or the Tax Commission sent him. Petitioner’s refusal stemmed from his belief that any correspondence sent to him needed a proper signature with an affirmation statement. Petitioner cited IRC section 6065, which requires taxpayers to file returns that are signed under penalties of perjury. Petitioner assumes this code section applies to notices sent by the Tax Commission, since Idaho adopts the Internal Revenue Code. See Idaho Code section 63-3004.

IRC section 6065 states:

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

The courts, when discussing this statute, have been unanimous in concluding that the words “required to be made” limit the application of the statute to tax returns and other documents that taxpayers are required to file. The statute does not apply to documents or correspondence issued or generated by the [Redacted] or state agencies. See Cermak v. United

States, 79 AFTR2d P97-1052, 97 TNT 121-44, KTC 1997-584, No. 96-2933 (7th Cir. 1997); Davis v. Commissioner, 115 T.C. 35, 42 (2000); Craig v. Lowe, KTC 1996-286, No. C-95-3006 (U.S.D.C. N.D.Cal. 3/7/1996); Milam v. Commissioner, T.C. Memo 2004-94; Larrew v. United States, KTC 2001-293 (N.D.Tex. 2001); Stone v. Commissioner, T.C. Memo. 1998-314 (stating that section 6065 applies to returns and other documents filed with the Commissioner, but does not apply to notices of deficiency); Cohen v. United States, 201 F.2d 386 (9th Cir.), cert. denied, 345 U.S. 951 (1953); Pursell v. United States, 1995 WL 273175 (E.D. Cal. 1995); Mueller v. Esselstrom, 1995 WL 462219 (C.D. Cal. 1995).

Furthermore, Idaho Code section 63-3002 states the intent of the Idaho income tax act to be “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 taxpayer to the internal revenue service shall be the identical sum reported to this state. . .” IRC section 6065 is outside the Internal Revenue Code’s measurement of taxable income. Therefore, IRC section 6065 is not applicable for Idaho income tax purposes. Petitioner’s premise that the Tax Commission’s letters and notices are unlawful, with no force and effect of law because of the lack of a sworn statement is just another example of wishful thinking by tax protesters desperate to find some technicality to absolve them of their tax liabilities.

Petitioner failed to put forth an argument worthy of consideration. Petitioner did not provide anything to show the Bureau’s provisional income tax returns were incorrect. A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-75 n.2, 716 P.2d 1344, 1346-47 n.2 (Ct. App. 1986). Therefore, the burden is on Petitioner to show that the tax deficiency is erroneous.

The Tax Commission reviewed the provisional returns the Bureau prepared and found them to be a fair representation of Petitioner's taxable income for taxable years 2006 through 2010.

CONCLUSION

Petitioner has not shown that the reported income was not received or cited relevant authority indicating that the Notice of Deficiency Determination was incorrect. Petitioner's income exceeded the threshold for filing income tax returns and the returns prepared by the Bureau seem to be reasonable, based upon the information available. Accordingly, the Tax Commission upholds the Notice of Deficiency Determination.

The Bureau added interest and penalty to Petitioner's Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated December 18, 2012, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED 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	\$1,258	\$315	\$474	\$2,047
2007	1,002	251	310	1,563
2008	1,340	335	328	2,003
2009	1,345	336	262	1,943
2010	1,714	429	253	<u>2,396</u>
			TOTAL DUE	<u>\$9,952</u>

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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.