

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25771
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

HISTORY

On March 01, 2013, the Idaho State Tax Commission’s Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Taxpayer) for Idaho individual income tax for years 2006 through 2011. The deficiency was based on income Taxpayer received from several sources while residing in Idaho.

In 2010, TDB obtained income information for Taxpayer from the [Redacted] and the Idaho State Tax Commission (Tax Commission). The information at that time showed that Taxpayer did not file any Idaho tax returns for taxable years 2006 through 2008, and that Idaho law may have required him to file. TDB discovered in later years that Taxpayer did not file any Idaho tax returns through taxable year 2011.

Information that TDB retrieved from the Department of Motor Vehicles showed that Taxpayer obtained an Idaho driver’s license in October 2006. He renewed the driver’s license in November 2010 and both licenses showed an [Redacted], address. Publically available information also shows that Taxpayer was involved in six court cases in [Redacted] County and four court cases in [Redacted] from 2007 through 2012.

The [Redacted] County assessor revealed in a letter dated October 25, 2010, that Taxpayer purchased [Redacted] in April 2006. Information obtained by TDB suggests that Taxpayer operated [Redacted] through 2011 as a [Redacted]. [Redacted]included a [Redacted].

The [Redacted] County assessor explained in the letter dated October 25, 2010, that Taxpayer sold these two businesses on September 9, 2008, but kept [Redacted].

Information that TDB obtained from the Idaho Secretary of State in July 2010 revealed that Taxpayer owned the following Idaho businesses: [Redacted]. Taxpayer owned [Redacted] from 2010 through 2011.

On July 27, 2010, TDB sent Taxpayer a letter reminding him that he had not filed Idaho individual income tax returns for the years 2006 through 2008. TDB requested that Taxpayer complete an enclosed questionnaire to confirm whether Idaho law required him to file. TDB also included in the letter questionnaires to gain more information about his businesses [Redacted].

TDB did not receive a response and consequently resent the letter on August 4, 2010. Taxpayer returned the questionnaire regarding individual income taxes on September 01, 2010, stating he was not required to file individual income tax returns in Idaho because he had “not generated any income.” Taxpayer still had not returned the other two questionnaires regarding [Redacted]. Accordingly, TDB sent those two questionnaires to Taxpayer a third time on September 9, 2010. TDB received the questionnaire for [Redacted] on October 18, 2010, in which Taxpayer stated the following: 1) The business had not begun yet, 2) it did not make retail sales, 3) the product or service it provided was a “[Redacted],” 4) there were no employees, and 5) it was a sole proprietorship.

On October 19, 2010, TDB requested additional information from the [Redacted] County assessor for taxable years 2006 through 2008. The assessor’s response on October 25, 2010, explained that Taxpayer sold the [Redacted] in September 2008. He subsequently cancelled his Idaho business and sales permit, even though he still owned [Redacted].

Taxpayer filed for Bankruptcy on February 5, 2013. The address he listed on the filing was [Redacted]. He stated the dates of occupancy were 2005 through 2011. In his Bankruptcy filing, Taxpayer only included income from rental properties and gold mining activities. Taxpayer stated in the filing that he earned \$21,000 in 2011 managing the rental properties of [Redacted]. Taxpayer also disclosed in the bankruptcy filing that he earned \$8,000 from gold mining in 2011.

The NODD was subsequently issued, treating Taxpayer as an Idaho resident and calculating that he was liable for \$184,425 of tax, penalty, and interest at that time. TDB gave Taxpayer until May 03, 2013, to respond. Taxpayer emailed TDB on April 27, 2013, explaining he was in [Redacted] and had been out of the country “a very long time.” The NODD consequently took longer to reach him so he requested a thirty day extension to respond. TDB granted him the extension.

On May 22, 2013, TDB received Taxpayer’s response to the NODD. His rebuttal contained a three page letter followed by sixty pages of small print. The content of the letter and the sixty pages suggested that Taxpayer believed income taxes to be illegal. The documents indicated that Taxpayer retrieved them from an internet website of an organization called Sovereignty Education and Defense Ministry (SEDM) found at <http://sedm.org/Forms/FormIndex.htm>.

SEDM described itself as a “whistleblowing group focused on researching, exposing, publicizing, and punishing government deception and corruption wherever it may be found, and especially in regards to matters relating to law, commerce, and taxation.” Among many other things, the website provides access to an abundance of tax protester ready-made forms for all occasions. Taxpayer included, in his rebuttal, the following forms from the website: Form

07.012, “Wrong Party Notice”; Form 04.201, “Tax Form Attachment”; and Form 06.027, “Sovereignty Franchise and Agreement.” It appears that Taxpayer also obtained his three page letter from the website and personalized it.

Taxpayer’s rebuttal documents included countless standard tax protester themes. In his response to the NODD, Taxpayer alleged that TDB did not provide him with evidence in support of its allegation. Taxpayer also claimed to have revoked his election to be treated as a U.S. citizen or resident for the years in question. The documents took six pages to explain why he is not the correct party. Taxpayer explained that the letters and NODD were addressed to “Taxpayer” but, according to the tax protester documents, he was a “Nontaxpayer.” The documents took forty pages to explain why he was a “Sovereign” citizen and not subject to tax laws.

The documents included myriad tax protester requests, including that TDB provide a) the serial number of its “pocket commission” or “equivalent proof” that it had the authority to perform the enforcement action, b) the auditor’s “real legal birth name,” work address, a copy of her “private ID,” and c) evidence of fourteen listed items before Taxpayer would accept TDB’s claims. Those fourteen items included proving that he was a Taxpayer and that he generated the income listed in the NODD.

DISCUSSION

The taxpayer's protester arguments are superfluous and unpersuasive. Numerous courts have addressed similar tax protester themes. In Colman v. Commissioner of Internal Revenue, 791 F.2d 68 (7th Cir. 1986) 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.

An individual's claim of sovereignty, in an attempt to avoid federal or state income tax, is “completely lacking in legal merit and patently frivolous.” Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); See also United States v. Studley, 783 F.2d 934, 937 (9th Cir. 1985); “Paying taxes is not voluntary.” Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1998); See also Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990). “[M]ere disagreement with that law does not constitute good faith misunderstanding of the law, because it is the duty of all persons to obey the law whether or not they agree with it.” United States v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985).

This decision summarizes Taxpayer's many arguments into three main issues: 1) Whether Taxpayer was a resident of Idaho from 2006 through 2011, 2) whether he met the definition of Taxpayer during those years, and 3) whether the Tax Commission has the burden of proving all of Taxpayer's demands.

1. Taxpayer was a resident of Idaho during taxable years 2006 through 2011

In his rebuttal documents Taxpayer claimed he was a sovereign citizen and not an Idaho resident. The courts have uniformly held that the characterization of a person's status as a natural born citizen or “sovereign” does not change his or her residency status for income tax

purposes. 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) (“That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. 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”).

Idaho Code § 63-3013 defines “resident” as:

any individual who “[i]s domiciled in the state of Idaho for the entire taxable year” or “[m]aintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.”

The Tax Commission concludes that Taxpayer was a resident of Idaho from 2006 through 2011. Taxpayer had a valid Idaho driver’s license from 2006 through 2011 with an [Redacted], address. Taxpayer provided no evidence that he was not in Idaho for at least 270 days each year. This information, coupled with the fact that Taxpayer stated on the Bankruptcy filing that he was an occupant of an [Redacted], address from 2005 through 2011, indicates that he was domiciled in and a resident of Idaho. Taxpayer’s involvement from 2006 through 2011 in several Idaho businesses supports the conclusion that his presence in Idaho was sufficient to establish residency in the state. That the Taxpayer managed [Redacted] from April 2006 through 2011 with no employees is strong evidence that Taxpayer was present in Idaho during those years. Managing the [Redacted] until September 2008 would require Taxpayer’s presence in

[Redacted] during that time. There is no evidence that Taxpayer, as manager, was not the one present in Idaho to attend to the rental properties of [Redacted] from 2006 through 2011.

Additionally, Taxpayer's involvement in six court cases in [Redacted] County and four court cases in [Redacted] county from 2007 through 2012 supports that he was present in Idaho during the years in question. As he stated in his bankruptcy filing, in 2011 Taxpayer earned \$8,000 gold mining, which also supports his presence in Idaho during that year. Taxpayer has failed to present any legal or factual information to show he was not an Idaho resident for income tax purposes during the applicable years. The Tax Commission finds that Taxpayer was a resident of Idaho from 2006 through 2011.

2. [Redacted] met Idaho's definition of "taxpayer" during 2006 through 2011

In his rebuttal documents, Taxpayer claimed that he was not a taxpayer. Idaho Code § 63-3009 defines "taxpayer" as "any person subject to a tax imposed by this act or required by the provisions of this act to file an income tax return, report income or pay a tax." A "person" is an "individual" (Idaho Code § 63-3005) and Idaho Code 63-3008 defines individual as "a natural person." Idaho Code identifies [Redacted] as a taxpayer for individual income tax purposes. Taxpayer conceded in his rebuttal that he is a "natural person", which qualifies him as an "individual", which constitutes a "person."

Idaho Code 63-3011B defines "taxable income" as "federal taxable income as determined under the Internal Revenue Code." "Taxable income," per the Internal Revenue Code, is "gross income minus the deductions allowed by this chapter." Internal Revenue Code § 63(a). Gross income constitutes "all income from whatever source derived" including "compensation for services," "gross income derived from business," "gains derived from dealings in property," "rents" and "income from discharge of indebtedness." Internal Revenue Code § 61(a). Idaho

Code requires every resident individual having gross income, as defined by Section 61(a) of the internal Revenue Code, exceeding a specified dollar amount, to file an Idaho individual income tax return. Idaho Code § 63-3030. In 2006, Idaho Code required single individuals to file if they had gross income of \$8,450 or more. This amount increased throughout the years to \$9,500 in 2011.

The following income evidence supports that Taxpayer is subject to Idaho income tax. Taxpayer stated in his bankruptcy report that in 2011 he had \$8,000 of income from gold mining. Based on that \$8,000 amount, TDB estimated additional gold mining income of \$8,000 per year from 2006 through 2010. His bankruptcy report also showed rental income in 2011 from [Redacted] of \$21,000. Based on that \$21,000 amount, TDB estimated that from 2006 through 2010 Taxpayer also had \$21,000 of rental income per year. TDB also estimated that from 2006 through 2011 [Redacted] likely had gross income of \$100,000 each year based on information available to the public.

The Tax Commission issued [Redacted] a sales and use tax audit deficiency based on merchandise it purchased. From this, TDB estimated that in 2010 [Redacted] had gross sales of \$688,000 and it is likely that, as the owner of that business, Taxpayer received income derived from those earnings. In addition, Taxpayer's 1099-Cs showed debt forgiveness totaling \$102,525 in 2008 and \$206,003 in 2009 and Taxpayer has not refuted that the debt forgiveness was taxable.

Based on the above facts, and the failure of Taxpayer to provide any other information indicating a different taxable status, the Tax Commission finds that Taxpayer met the definition of a taxpayer for Idaho income tax purposes during the years in question.

3. Burden of Proof

In his rebuttal documents, Taxpayer demanded that TDB prove numerous items before he would accept TDB's claims. When the Tax Commission issues an NODD Idaho courts presume it 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).

Taxpayer repeatedly demanded that the Tax Commission prove almost every basic fact involved in the case, including proof that a) the Tax Commission has the authority to perform the enforcement action, b) he was a Taxpayer and c) he generated the income listed in the NODD. Taxpayer incorrectly put the burden of proof on the Tax Commission to prove that he owed that which the Tax Commission's records showed. Taxpayer has failed to provide anything that would show that the documentation, on which TDB based the NODD, was suspect. Taxpayer failed to meet his burden of proof that the NODD was inaccurate.

CONCLUSION

The Tax Commission has reviewed the information that Taxpayer submitted. Taxpayer has argued in large volume many irrelevant issues, but failed to present evidence that he was not an Idaho resident for income tax purposes from 2006 through 2011. He has failed to provide the Tax Commission with Idaho business income tax returns to show qualified expenses for each of his Idaho businesses. He has failed to provide any valid reason why he does not owe the taxes the commission assessed. Taxpayer has therefore failed to meet his burden to prove that the NODDs were incorrect.

THEREFORE, the NODD dated March 01, 2013, is hereby APPROVED, AFFIRMED, and MADE FINAL as to taxable years 2006 through 2011.

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>
2006	\$10,515	\$ 2,629	\$3,816	\$ 16,960
2007	9,441	2,360	2,765	14,566
2008	17,118	4,280	3,922	25,320
2009	25,177	6,294	4,509	35,980
2010	62,675	15,669	8,268	86,612
2011	8,996	2,249	826	12,071
			TOTAL	<u>\$191,509</u>

The Tax Commission calculated interest for the above deficiency through October 31, 2014.

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

An explanation of Taxpayer'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.
