

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39162
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On July 17, 2014, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income taxes, penalties, and interest for taxable years 2008 through 2011, in the total amount of \$3,121.

On September 19, 2014, the taxpayer filed a timely appeal and petition for redetermination. The Commission, having reviewed the file, hereby issues its decision.

When the Bureau could not find any record of the taxpayer's 2008 through 2011 Idaho individual income tax returns, a letter was sent to the taxpayer advising her of the missing returns and asking her for an explanation. The taxpayer did not respond.

Because the taxpayer did not file her state income tax returns, the Bureau prepared provisional returns and issued an NODD. The NODD was based on records retained by the Commission. The taxpayer protested the Bureau's determination and stated that she is not a taxpayer or employee and has no taxable income or taxable activities. To date, no returns have been received for the aforementioned years.

The Bureau recognized the taxpayer's statements as those similar to various tax-protestor movements, so the matter was referred for administrative review. The Tax Commission reviewed the case and sent the taxpayer a letter, giving her the opportunity to present her position through one of two methods adopted by the Tax Commission. The taxpayer did not respond.

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 she is not employed by the [Redacted] government, the State, or any other governmental body, she 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 [Redacted] 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).

The taxpayer has provided nothing that would dissuade the Commission from accepting the Bureau's determination of Idaho income and Idaho income tax for taxable years 2008 through 2011. Therefore, the Commission upholds the Bureau's determination of the taxpayer's Idaho taxable income.

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

THEREFORE, the Notice of Deficiency Determination dated July 17, 2014, and directed to [Redacted], is hereby APPROVED and MADE FINAL.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$1,069	\$267	\$280	\$1,616
2009	584	146	116	846
2010	245	61	43	349
2011	282	71	32	<u>385</u>
				<u>\$3,196</u>

Interest is calculated through July 1, 2015.

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 _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
