

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

In the Matter of the Protest of )  
[Redacted] ) DOCKET NO. 0-926-230-528  
)  
)  
Petitioner. ) DECISION  
\_\_\_\_\_ )

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated November 2, 2017. Petitioner disagreed that he received any income that was taxable. The Tax Commission, having reviewed the file and Petitioner’s arguments, upholds the Notice of Deficiency Determination.

**BACKGROUND**

The Income Tax Audit Bureau (Bureau) received information from the [Redacted] Assessor’s office in relation to an inquiry they made to verify Petitioner’s residence. The Bureau reviewed Petitioner’s filing history and found Petitioner filed a resident Idaho individual income tax return for tax year 2012, a part-year resident Idaho individual income tax return for 2013, no individual income tax return for 2014, a part-year Idaho individual income tax return for 2015, an amended 2015 resident Idaho individual income tax return, and no individual income tax return for 2016. The Bureau decided a review was necessary.

The Bureau sent Petitioner a letter asking him to complete a domicile questionnaire and to provide some specific information. Petitioner completed and returned the domicile questionnaire. Petitioner also provided some of the specific information the Bureau requested. Of the specific information Petitioner provided, the most notable was his statement that he had zero wages for the tax years 2014 and 2016. Petitioner stated that based on the “real legal custom” definition of the terms wages and employee in the Internal Revenue Code (I.R.C.), he had no wages for income tax

purposes. The Bureau followed up with a letter asking about rental income Petitioner received from property he owned in Idaho. Petitioner responded that twice he attempted to help some individuals by allowing them to live at his house rent free. Petitioner stated he got burned both times. Petitioner stated he now rents his [Redacted] house for \$500 a month and lives in his [Redacted] house. Petitioner also stated the rent he receives is not taxable because it does not come from any federally connected privileged activity.

The Bureau determined from Petitioner's responses that Petitioner was domiciled in Idaho. The Bureau also determined Petitioner had taxable wages. Therefore, the Bureau adjusted Petitioner's 2015 return and prepared Idaho individual income tax returns for 2014 and 2016. The Bureau sent Petitioner a Notice of Deficiency Determination which Petitioner protested.

Petitioner stated he did not have wages as defined in the I.R.C. To have wages he would have to be an employee and his employment is not included within the I.R.C.'s definition. Petitioner further stated when the I.R.C. defines gross income it has to have a limited meaning. Otherwise, if it meant everything that comes in from whatever source, it would be a capitation tax and the U.S. Constitution would require it to be apportioned in accordance to the census before the tax could be levied. Petitioner stated gross income refers to all received payments from federal or federally connected employment, investment, or other taxable activities. Petitioner stated he only received taxable income from the unemployment compensation he received in 2016. Petitioner stated the rents he received were not from a federal taxable activity, therefore, they do not constitute taxable income under relevant income tax law.

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. The Appeals Unit reviewed Petitioner's case and sent him a letter that discussed the options for redetermining the Notice of Deficiency Determination. Petitioner requested a hearing,

which was scheduled and held on June 28, 2018. Prior to the hearing Petitioner provided the information he was going to present at the hearing. During the hearing Petitioner's argument consisted of references to the U.S. Constitution, the definition of the various terms in the I.R.C., that the 16<sup>th</sup> Amendment to the Constitution pitted the Constitution against itself, that the income tax is only on certain privileges, that the income tax is an excise tax, and that Idaho law is based on federal law so what is not taxable by federal law is not taxable by Idaho. Petitioner cited numerous cases in his pre-hearing information, which he referred to during the hearing. The Appeals staff explained to Petitioner what the Tax Commission's position has been in the past on claims such as his and that it was not likely to change. After some discussion the hearing was adjourned. Since Petitioner had not read a couple of the major cases he cited, the Appeals staff stated it would send him copies of the cases along with another case that addressed a lot of his arguments. Petitioner e-mailed a couple of questions, which the Appeals staff answered. Petitioner made no further contact, so the Tax Commission now decides the matter.

#### LAW AND ANALYSIS

Petitioner's primary argument is whether he received wages, and if so, are those wages income that is taxable.

For the years in question, Petitioner was employed by either [Redacted]

Both employers compensated Petitioner for his labor in the form of wages. Petitioner asked how the Tax Commission defined income. The term income is not specifically defined in the Idaho Code or the I.R.C. However, various derivatives of the term are defined in the I.R.C., i.e. gross income, adjusted gross income, and taxable income. The U.S. Supreme Court did define income in a case determining the taxability of transferring a surplus to the capital account as a result of a stock dividend. In *Eisner v. Macomber*, 252 U.S. 189, 40 S.Ct.

189 (1920) the court stated “Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets . . .” Gross income is defined in I.R.C. § 61 as all income from whatever source derived including compensation for services, fees, commissions, fringe benefits, and similar items.

Petitioner argued that his employers incorrectly reported that he had wages. Petitioner submitted forms 4852 for tax year 2015 to correct what he believes was his employers’ error of stating that he was paid wages and filing forms W-2. Petitioner put forth the same argument for tax years 2014 and 2016 as his reason for not filing income tax returns for those years. Regardless of what Petitioner calls his wages, Petitioner received compensation for the work he did for his employers. Compensation in whatever form is still part of gross income. Petitioner received compensation for his labors; he has gross income, which is the starting point for determining taxable income.

Petitioner also argued the reason he had no wages was because he was not an employee as defined in I.R.C. § 3401. I.R.C. § 3401 is part of Subtitle C, Chapter 24 which deals with employment taxes, and specifically the collection of income tax at its source, namely on wages. I.R.C. § 3401 imposes the requirement that employers withhold tax from the wages they pay to their employees. It establishes the general rule that wages include all remuneration for services performed by an employee for his employer. Section 3401(c) states, “For the 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 . . .” Petitioner argued that since he was not employed by the federal government, a State, or any other governmental body, he was 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 various governing bodies. Petitioner received compensation for services he provided his employer. Petitioner had income and he was required to report that income on an income tax return.

These arguments and Petitioner's other arguments are similar, if not the same as, frivolous tax protester arguments. Such "causes and beliefs" (arguments) have been repeatedly rejected by the courts. *See Sego v. Commissioner*, 114 TC 604 (2000); *Nagy v. Commissioner*, TCM 1996-24; *Scott v. Dept. of Taxation*, 2008 WL 4542978 (Vt.); *United States v. Jagim*, 978 F.2d 1032, 1036 (8th Cir. 1992).

Suffice it to say, Petitioner's arguments are tedious, and the logic is arduous and self-serving to Petitioner. In most, if not all, of Petitioner's arguments he cites phrases or sentences from court cases that are taken out of context to fit his particular need or are totally distinguishable from the case at hand. When asked if he read the cases cited, Petitioner stated no, he had not read them. It was obvious from the material Petitioner submitted he was following a course of action promoted from a tax protester website.

#### CONCLUSION

The arguments Petitioner presented have been previously considered by the Tax Commission. Petitioner did not present anything new. Petitioner had income in all the years in question and that income is not exempt from tax. Petitioner, being domiciled in Idaho, was required to file Idaho individual income tax returns and report his income from all sources. Therefore, the Tax Commission finds Petitioner's returns, the original and amended 2015 returns, were not true and accurate representations of his Idaho taxable income. As a result, the Tax

Commission upholds the change made to Petitioner's 2015 Idaho individual income tax return and upholds the returns the Bureau prepared for tax years 2014 and 2016.

The Bureau added interest and penalty to Petitioner's Idaho tax deficiency. The Tax Commission reviewed the additions and found them appropriate per Idaho Code §§ 63-3045 and 63-3046.

THEREFORE, the Tax Commission AFFIRMS the Notice of Deficiency Determination dated November 2, 2017, addressed to [Redacted]

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$1,026	\$257	\$151	\$1,434
2015	4,139	834	441	5,414
2016	6,021	1,505	418	<u>7,944</u>
			TOTAL DUE	<u>\$14,792</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given. An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
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.

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