

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
[Redacted])	DOCKET NO. 1-273-935-872
)	
Petitioners.)	DECISION
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[Redacted] (Petitioners) protested Revenue Operations denial of their refund claim for tax year 2014. Petitioners disagreed that their amended 2014 Idaho individual income tax return did not comply with Idaho tax law. The Tax Commission, having reviewed the file and Petitioners’ argument, agrees that Petitioners are not entitled to the refund claimed.

BACKGROUND

Petitioners filed a part-year resident Idaho individual income tax return for tax year 2014. Petitioners’ return reported Idaho source income in the amount of \$264,113.

On November 6, 2017, Petitioners filed an amended Idaho individual income tax return for tax year 2014. Petitioners’ amended return changed their reported wages to zero and eliminated their business income reported on schedule C. Petitioners claimed the W-2 forms reported by their employers were in error. Petitioners also stated they received no monies as income; all the compensation from their labor was non-taxable. Petitioners submitted copies of federal form 4852 with their amended return to correct each form W-2 to \$0 wages earned.

During the processing of Petitioners’ return, the return was identified as a return with potential errors. Revenue Operations determined Petitioners’ amended return did not accurately report their Idaho taxable income, so it corrected Petitioners’ return. Revenue Operations sent Petitioners a letter stating it changed Petitioners’ return because their return did not comply with Idaho law. Petitioners protested citing Idaho code § 63-3002 and stating that Idaho is required by

law to follow federal law in the computation of Idaho income tax. Petitioners provided a copy of an amended federal form 1040X as evidence the amount of receipts subject to measurement as gain or profit, i.e. income, has been determined and truthfully reported as such and all erroneous information returns have been specifically rebutted under penalty of perjury as required by federal statute. Petitioners asked that Revenue Operations process their return and disburse their refund immediately. Unpersuaded, Revenue Operations referred Petitioners' amended return for administrative review.

The Tax Commission sent Petitioners their options for having the matter redetermined. Petitioners did not request a hearing but rather submitted additional information for the Tax Commission's consideration. The additional information included Petitioners' re-affirmation that Idaho follows federal law, citing Idaho Code § 63-3002, that income is not "all that comes in", that the income tax is an excise tax, that only subject activities and privileges can produce income, and that all erroneous information returns have been rebutted because they were not sourced from federally excise taxable activities or privileges.

The Tax Commission considered Petitioners' arguments and issued its decision based on the law and discussion that follows.

LAW AND ANALYSIS

Petitioners have two principal arguments. One is that their wages do not constitute income as it is defined in the Internal Revenue Code (I.R.C.). The second is that they were not engaged in a trade or business which Petitioners later termed taxable activities or privileges. Because of these two facts and the fact that Idaho tax law follows federal tax law, Petitioners stated only a certain amount of what they received is taxable by Idaho.

For the year in question, Petitioners were employed by [Redacted] [Redacted]

[Redacted] Petitioners' employers compensated them for their labor in the form of wages. [Redacted] also worked as an [Redacted] in a sole-proprietorship capacity. Petitioners claim none of the compensation they received from these activities constitutes taxable 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 defined 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. Petitioners argued their employers incorrectly reported they had wages. Petitioners filed forms 4852 to correct what they believe were their employers' errors of stating that they were paid wages and filing forms W-2.

Petitioners argued their wages were not subject to withholding as defined in I.R.C. § 3401. Petitioners stated they were not federal employees; they worked for private-sector companies as defined in I.R.C. § 3401(c).

In this argument, Petitioners misuse the definition of employee found in I.R.C. § 3401. 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 . . ." Petitioners interpret this definition as the only employees that have taxable wages are government

employees. However, the purpose of this subsection is not to specify every possible employee or define the employees that are required to pay income tax. I.R.C. § 3401 is part of Subtitle C, Chapter 24 which deals with employment taxes, and specifically collection of income tax at the source, i.e. on wages. I.R.C. § 3401 imposes the requirement that employers withhold tax from wages paid to their employees. It establishes the general rule that wages include all remuneration for services performed by an employee for his employer. The purpose of section 3401(c) is to include, for withholding income tax from wages, individuals employed by the government. Even if Petitioners could prove that they are not an “employee” within the meaning of section 3401, it would only mean that their compensation was not subject to withholding. It does not exclude their compensation from being included in gross income as defined by section 61, and in taxable income as defined by section 63. Those sections are in Chapter 1 of the I.R.C., not Chapter 24.

Petitioners’ second argument centers on the definition of “trade or business.” Petitioners believe I.R.C. § 7701(a)(26) definition of the term does not mean all trade and all business, it means specific types, i.e. the performance of the functions of a public office. I.R.C. § 7701(a)(26) states, the term trade or business includes the performance of the functions of a public office. Once again, this definition does not say the term only means the performance of the function of a public office, it says it includes the performance of the functions of a public office.

In *Wnuck*, 136 T.C. 498 at 506 (2011) the court stated, “Anyone fluent in English knows that the word ‘includes’ cannot be assumed to mean ‘includes only’ —especially when such a meaning would have the ludicrous result of excluding from “United States” all 50 *States*.” See also *Helvering v. Morgan’s, Inc.*, 293 U.S. 121, 125 n. 1, 55 S. Ct. 60, 79 L. Ed. 232 (1934) where the court stated, “The terms ‘means’ and ‘includes’ are not necessarily synonymous. * * * The natural distinction would be that where ‘means’ is employed, the term and its definition are to be

interchangeable equivalents, and that the verb ‘includes’ imports a general class, some of whose particular instances are those specified in the definition.”

Petitioners’ claim that they were not in a trade or business, or not engaged in privileged activities is without merit and has no legal support. Of the court cases cited by Petitioners only one supported Petitioners’ view of not being able to levy a tax on all income. In that case the court stated it was unconstitutional for Tennessee to tax all income because its constitution only allowed an income tax on the gain from stock and bonds. Tennessee later amended its constitution to allow an income tax on all income. All the other case cites by Petitioners are distinguishable or taken out of context, and most actually support a tax measured by income.

Petitioners’ 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 T.C. 604 (2000); *Nagy v. Commissioner*, T.C.M. 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, Petitioners’ arguments are tedious, and the logic is arduous and self-serving. As with most, if not all, tax protestor arguments, Petitioners pick and choose phrases or sentences from court cases that fit their particular need.

CONCLUSION

The arguments Petitioners presented have been previously considered by the Tax Commission. Petitioners did not present anything new. Petitioners had income for the year in question and that income was not exempt from tax. Petitioners were required to report to Idaho their income from all sources while residents of Idaho. Therefore, the Tax Commission finds Petitioners’ original 2014 return was the true and accurate representation of their Idaho taxable

income. As a result, the Tax Commission upholds the denial of Petitioners' 2014 amended Idaho individual income tax return and hence the denial of Petitioners' refund claim.

THEREFORE, the Tax Commission AFFIRMS Revenue Operations denial of [Redacted] refund claim received November 6, 2017.

An explanation of Petitioners' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2019.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019,
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.
