

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

In the Matter of the Protest of	)	
[Redacted]	)	DOCKET NO. 1-660-158-976
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated May 7, 2018. Petitioners disagreed that they had income that was taxable. For the following reasons, the Tax Commission issues its decision upholding the Notice of Deficiency Determination.

**BACKGROUND**

Petitioners filed their 2015 and 2016 Idaho individual income tax returns reporting their income as zero. Attached to Petitioners' returns was Form 4852 Substitute for Form W-2, Wage and Tax Statement.... etc... (Form 4852) showing [Redacted] worked for [Redacted] but that his wages were zero. The forms also showed that [Redacted] employer withheld amounts for Social Security and Medicare taxes. Petitioners' reason for including Form 4852 was that [Redacted] received incorrect Forms W-2 Wage and Tax Statement (W-2) from his employer.

Revenue Operations questioned Petitioners' use of Form 4852 but received no response from Petitioners. The matter was then referred to the Tax Discovery Bureau (Bureau) for further examination.

The Bureau researched the Tax Commission's records and found that [Redacted] employers submitted informational W-2s showing he had wages in the amounts of \$17,156, \$7,445, and \$38,539, for 2015 and \$61,154, for 2016. The Bureau reviewed this information and

corrected Petitioners' Idaho income tax returns. The Bureau sent Petitioners a Notice of Deficiency Determination which Petitioners protested.

Petitioners stated the W-2s received from [Redacted] employers contained erroneous income information. Petitioners stated they were private-sector citizens employed by private-sector companies. Petitioners stated that the private-sector companies [Redacted] worked for erroneously reported payment to him as income or wages. Petitioners stated this was incorrect because [Redacted] was not employed in a trade or business, nor was he an officer of a corporation as defined in Internal Revenue Code (I.R.C.) §§ 3401 and 3121. Petitioners stated the private-sector companies [Redacted] worked for are not payers under I.R.C. § 6041A, and because they are not payers, they do not fall within the definition of a trade or business in I.R.C. § 7701(a)(26). Consequently, Petitioners believe they were not engaged in a trade or business or any other federally privileged activity. Petitioners stated, no taxable event occurred, therefore, no tax liability was incurred. Petitioners stated this is why they attached Form 4852 to their income tax returns.

The Bureau recognized Petitioners' protest as one similar to tax protesters. Therefore, the Bureau referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals sent Petitioners a letter asking them how they wanted to proceed with their protest. Petitioners asked for a telephone hearing. Appeals scheduled and held a telephone hearing with Petitioners on December 4, 2018.

During the hearing Petitioners pointed out that they never worked for the federal government. Petitioners stated they filed the same income tax returns and Forms 4852 with the Internal Revenue Service as they did for Idaho. Referencing Idaho Code § 63-3002, Petitioners stated if they are not liable for federal income tax, they are not liable for Idaho income tax.

Petitioners stated their position was explained in their letters dated May 12, 2017, and July 3, 2018. Petitioners provided copies of those letters to ensure the Tax Commission had them. Petitioners stated they had nothing further to argue. Having Petitioners' argument fully submitted, the Tax Commission decided the matter as follows.

### **LAW AND ANALYSIS**

[Redacted] was employed by three employers in 2015 and one employer in 2016. Each of those employers filled out and sent to Petitioners and the necessary government agencies the required labor information and W-2 statements. I.R.C. § 3402 requires every employer making payment of wages to deduct and withhold a tax from such wages. Petitioners argue that their private-sector employers erroneously deducted withholdings as they were not employed in a trade or business nor were they an officer of a corporation. Petitioners stated they were not employees and their employers were not employers as defined in I.R.C. § 3401(c) and (d).

Petitioners believe I.R.C. § 3401(c) defines employee as only government workers and corporate officers. Petitioners also believe I.R.C. § 3401(d) defines employer as a federal entity. However, the purpose of I.R.C. § 3401(c) is not to define who is an employee, its purpose is to include individuals employed by the government and corporate officers as employees. Furthermore, I.R.C. § 3401(d) defines an employer as a "person for whom an individual performs or performed any service . . . as the employee of such person. . ." I.R.C. § 3401(d) does not exclude so called private-sector companies from the definition of an employer.

In addition, these sections of the I.R.C. are found in 26 US Code 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. § 3402 imposes the requirement that employers withhold tax from wages paid to their employees. I.R.C. § 3401(a) defines wages generally as all remuneration for services

performed by an employee for his employer. Even if Petitioners could somehow prove they were not an “employee” within the meaning of I.R.C. § 3401(c), it would only mean that their compensation was not subject to withholding. It would not exclude their compensation from being included in gross income as defined by I.R.C. § 61, or in taxable income as defined by I.R.C. § 63. Those sections are in 26 US Code Subtitle A - Income Taxes, Chapter 1, not 26 US Code Subtitle C – Employment Taxes and Collection of Income Tax, Chapter 24.

Petitioners also cited I.R.C. § 3121 stating that their income or wages were erroneously reported as they were not employed in a trade or business. However, this section is also under 26 US Code Subtitle C, Chapter 21 – Federal Insurance Contributions Act, which specifically states “for the purposes of this chapter.” Therefore, once again Petitioners are not arguing that their income is not taxable under Subtitle A, income taxes, but rather that it’s not taxable under the federal insurance contributions act. It is interesting to note, however, that Petitioners do claim a tax withheld on their Forms 4852 for social security, i.e. federal insurance contribution act.

Petitioners’ further their argument by stating they are not in a “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. Again, this is not a definition, it is a statement that the performance of the function of a public office, is also a trade or business. See I.R.C. § 7701(c) for how the use of the terms includes and including are construed in the I.R.C.

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’ argument that they and the private-sector companies they worked for were not in a trade or business, has no merit or legal basis in law. Petitioners received income from their employers, private-sector or not, and that income is reportable on an income tax return to both the Internal Revenue Service and the state of Idaho.

In Idaho, it is well established that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. *See Albertson's Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814 (1984). The burden is on the taxpayer to show that the tax deficiency is erroneous. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). Other than the tax protester type arguments, Petitioners provided nothing to show that the Notice of Deficiency Determination is erroneous. Petitioners did not carry their burden.

The arguments Petitioners presented did not persuade the Tax Commission that Petitioners compensation was not taxable. Therefore, after reviewing the adjustments the Bureau made to Petitioners’ returns, the Tax Commission finds them appropriate and hereby upholds the Notice of Deficiency Determination.

The Bureau added interest and penalty to Petitioners’ tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code §§ 63-3045 and 63-3046.

THEREFORE, the Tax Commission AFFIRMS the Notice of Deficiency Determination dated May 7, 2018, directed to [Redacted]

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2015	\$2,647	\$132	\$325	\$3,104
2016	2,542	127	219	<u>2,888</u>
			TOTAL DUE	<u>\$5,992</u>

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

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.

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