

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-023-929-856 &
,)	1-177-494-528
)	
Petitioner.)	DECISION
<hr style="width: 50%; margin-left: 0;"/>)	

(Petitioner) protested the Notice of Deficiency Determination (Notice) dated September 29, 2023, and the Notice dated July 31, 2023. Petitioner disagreed with the Tax Discovery Bureau (Bureau)’s determination of his Idaho taxable income for tax years 2019, 2021, and 2022. The Idaho State Tax Commission (Tax Commission) reviewed the matter and for the reasons stated below upholds both Notices.

BACKGROUND

The Bureau reviewed Petitioner’s Idaho returns filed for tax years 2021 and 2022 and sent a letter on June 8, 2023, notifying him that he filed these returns incorrectly by reporting no taxable income for either year. On the same day, June 8, 2023, the Bureau sent a letter inquiring Petitioner about his filing requirement for tax year 2019 since he did not file an Idaho return for that year. The Bureau received no response from Petitioner regarding any of these years; therefore, the Bureau issued a Notice for tax year 2019 (2019 Notice), and another Notice for 2021 and 2022 (2021-2022 Notice).

In response to the Bureau’s Notices, Petitioner provided a statement, addressing the tax years 2019, 2021 and 2022: “I have received no income, have no ‘taxable income’, no ‘Idaho taxable income’, and therefore no ‘wages’ as that term is defined in Idaho and Federal Statutes, Rules and Codes.” Petitioner enclosed his Idaho Form 40 individual income tax return and his federal Form 1040 for tax year 2019, reporting no taxable income. Petitioner’s 2019 Idaho return

includes federal Form 4852, changing his W-2 wages, tips, other compensation, and taxes withheld to all zeros. Petitioner's "Statement to Correct incorrectly Reported Form 1099-K Information Return" states: "The 1099-K should not have been used for either amount as NO such transaction occurred." In the protest, Petitioner requested an informal hearing with the Tax Commission to discuss redetermination of the Notice if the Bureau, after receiving the protest and "concluding its deliberation thereupon, does not see fit to honor my filed Tax Returns..." The Bureau acknowledged Petitioner's protest and referred the matter to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals reviewed the matter and sent Petitioner a letter confirming receipt of his request for an informal hearing. Petitioner responded and scheduled a hearing, which was held on November 1, 2023.

During the hearing, Petitioner mentioned that his arguments on the present case are the same as his prior appeal cases for which the Idaho district court affirmed the Idaho Board of Tax Appeal's position, affirming the Tax Commission's decision on Docket Numbers 0-713-934-848 and 2-117-576-704. Petitioner clarified that his arguments have not changed at all since then.

Petitioner's arguments are common "tax protester" or "frivolous"¹ tax arguments, including, but not limited to, that the federal income tax law is unconstitutional, the income tax is an indirect excise tax, federal or Idaho income tax law does not impose a liability on the mere receipt of money, or being paid for work. Petitioner believes that the "money" received for his labor is not subject to Idaho income tax because neither he, nor whoever paying compensation for his labor, is an agent of the State. Petitioner continued his argument that the Bureau relied upon

¹ IRC Notice 2010-33, outlining "frivolous" positions.

unsworn “information returns” such as federal Form W-2s² and 1099s³, which, Petitioner believes, are inadmissible as evidence and insufficient to establish any basis for deficiencies or liabilities.

While Petitioner was presenting his position during the hearing, he heavily relied on the book; “Cracking the Code”, written by Peter Hendrickson who filed a joint-married tax return on which they falsely reported their income as zero by taking the position that only federal, state, or local government workers are liable for federal income tax or subject to the withholding of federal taxes. The court found Hendrickson guilty of filing false tax return documents. *United States v. Hendrickson*, 822 F.3d 812 (2016).

At the conclusion of the hearing, Petitioner stated he intended to provide additional information for consideration by November 27, 2023. On November 27, 2023, instead of providing additional information, Petitioner requested an extension, and Appeals allowed Petitioner additional time until December 17, 2023. Petitioner has yet to provide any additional information. Having reviewed the file, the Tax Commission hereby issues its final decision.

LAW AND ANALYSIS

Idaho Code section 63-3002 identifies the provisions of the IRC for the measurement of taxable income. The result of that measurement is that Idaho taxable income is the same as federal taxable income, subject to the modifications of the Idaho law. Petitioner questioned the Tax

² Federal Form W-2 Wages and Tax Statement

³ Petitioner received federal Forms 1099-MISC, 1099-K, and 1099-NEC:

1099-MISC Miscellaneous Information

1099-K Payment Card and Third Party Network Transactions is a report of payments a taxpayer received for goods or services from payment app or online marketplaces. A payment settlement entity (PSE) makes a payment in settlement of a reportable payment transaction, that is, any payment card or third-party network transaction, if the PSE submits the instruction to transfer funds to the account of the participating payee to settle the reportable payment transaction.

1099-NEC, Nonemployee Compensation, is to report a receipt of payment from independent contractor jobs, also sometimes referred to as self-employment income, for tax year 2020 and forward. For the tax years prior to 2020, since 1099-K wasn't available, a taxpayer used Form 1099-MISC, instead.

Commission's ability to make changes to the income tax returns he filed. Petitioner argued that any change made to his Idaho income tax returns would make them out of compliance with Idaho Code section 63-3002. Petitioner believes that he completed his Idaho returns as the Idaho statutes require by filing his Idaho returns with the precise same amounts for gross income and taxable income reported to the Internal Revenue Service and signed his returns as sworn to be true and correct under penalty of perjury. With the federal returns, Petitioner submitted federal Form 4852 to change his W-2s and 1099s to zero and reported no income. Filing Form 4852 correcting W-2s and or 1099s is one of the methods commonly used by a tax protester when evading income tax.

Internal Revenue Code (IRC) section 6041 provides that every person⁴ engaged in a trade or business⁵ must file an information return, i.e., federal Forms W-2 and 1099, for payments made to another person in the course of the payor's trade or business that constitutes fixed or determinable income aggregating \$600 or more in any tax year⁶. The payments subject to the requirements of information return include, but are not limited to, salaries, wages, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income, and commissions, fees, interest, royalties, and pensions. In the present case, the "person engaged in a trade or business" is Petitioner's employers, the contracting companies who hired him as an independent contractor, and the paying companies who settled his payment transactions, in other words, the payors of Petitioner's compensations. The "payments subject to this information-return requirements" are the payments of compensation that Petitioner received from the payors for his

⁴ IRC § 7701 Definitions. (a)(1) Person. The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

⁵ Treasury Regulation (Treas. Reg.) § 1.6041-1. Return of information as to payments of \$600 or more. (b)(1) In general. The term "all persons engaged in a trade or business", as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit.

⁶ IRC § 6041 Information at source. (a) Payments of \$600 or more.

labor for each tax year. Therefore, IRC section 6041 requires the payors of Petitioner's compensations to file federal Form W-2s and 1099s with the IRS for the payments made to Petitioner for his labor for each tax year. Petitioner must report these information returns as federally filed by the payors, to the State of Idaho, because of the intent of the legislature to make the provision of the Idaho act identical to the provision of the Federal IRC, relating to the measurement of taxable income⁷. The Tax Commission finds the information returns; W-2s and 1099s, are admissible as evidence and sufficient to establish the basis for Petitioner's deficiencies or liabilities.

Petitioner argued that, if income tax is a direct tax, it must be apportioned among the states. Petitioner believes that only income earned from activities suited for an excise tax can be subject to income tax as it is an indirect tax, and "working" is not one of the activities; therefore, his compensation is not subject to income tax. For his compensation to be subject to income tax, he believes that a government agency must grant him a privilege or franchise. The Tax Commission finds that Petitioner's arguments; the income tax applies only to objects suited to an excise tax, or indirect tax, and can be imposed only when involving a government privilege or franchise, are frivolous.

Petitioner also argued that wages and compensation received for his labor are not "income" because there is no taxable gain when a person "exchanges" labor for money. Under his theory, wages are not taxable income because people have basis in their labor equal to the fair market value of the wages they receive; thus, there is no gain to be taxed. Generally, "income" is money

⁷ Idaho Code § 63-3002. Declaration of intent. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law;...

or value that an individual or business entity receives in exchange for providing a good or service through investing capital. Although the term “income” is not specifically defined or codified in the Idaho Code or the IRC, various derivatives of the term are defined in the IRC, i.e., gross income, adjusted gross income, and taxable income. The United States Supreme Court did define income in a case determining the taxability of capital gain. In *Eisner v. Macomber*, 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 . . .” *Eisner v. Macomber*, 252 U.S. 189, 40 S.Ct. 189 (1920). IRC section 61⁸ defines gross income⁹ as all income from whatever source derived including compensation for services, fees, commissions, fringe benefits, and similar items. All compensation for personal services, no matter what the form of payment, must be included in gross income. This includes salary or wages paid in cash, as well as the value of property and other economic benefits received because of services performed, or to be performed, in the future. The Tax Commission finds that Petitioner’s argument; that wages and other compensations for personal services are not income because there is no gain when a person “exchanges” labor for money, is also without merit. The Tax Commission finds, regardless of what Petitioner wants to call it, he received compensation for his labor either as an employee or an independent contractor, and whatever compensation he received is gross income; therefore, it is part of his taxable income.

Idaho Code section 63-3042 provides that the Tax Commission can examine any books, papers, records, or other data for the purposes of ascertaining the correctness of any return,

⁸ IRC § 61 Gross income defined. (a) General definition. Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

⁹ Idaho Code § 63-3011. GROSS INCOME. The term "gross income" means gross income as defined in section 61(a) of the Internal Revenue Code.

determining the liability of any person for any tax, or collecting any such liability of a taxpayer. Therefore, the Tax Commission has the authority and is in fact mandated by Idaho Code section 63-3040 to examine the correctness of an income tax return submitted to the Tax Commission. Any changes the Tax Commission makes to a taxpayer's Idaho income tax return is to bring that return into compliance with the Idaho income tax statutes.

Petitioner's arguments are similar, if not the same, to frivolous tax protester arguments, and such "cases 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). The Tax Commission has considered Petitioner's arguments and finds them nothing but illogical and flawed tax protester rhetoric to support his protest. Such arguments are unconvincing. As a result, the Tax Commission finds that Petitioner did not meet his burden of proving error in the Notice.

CONCLUSION

Petitioner had income in all the years, and that income was not exempt from income tax. Petitioner must file Idaho individual income tax returns and report his income from all sources. The Tax Commission finds the returns submitted by Petitioner for tax years 2019 through 2022, are not true and accurate representations of his Idaho taxable income. As a result, the Tax Commission upholds the Notices.

The Bureau added interest to Petitioner's Idaho tax deficiency for all tax years. The Tax Commission reviewed the addition and found it appropriate per Idaho Code section 63-3045. The Tax Commission added penalty to Petitioner's Idaho tax deficiency at fifty percent (50%) of the

total amount of the deficiency for each tax year because the deficiency is due to Petitioner's intent to evade tax per Idaho Code section 63-3046.

THEREFORE, the Tax Commission AFFIRMS the 2019 Notice dated September 29, 2023, and the 2021-2022 Notice dated July 31, 2023, directed to Petitioner.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest. Interest is through April 17, 2024.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2019	\$1,251	\$626	\$174	\$2,051
2021	2,173	1,087	193	3,453
2022	973	487	52	1,512
			TOTAL DUE	<u>\$7,016</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 _____ 2024.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2024,
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:

Receipt No.
