

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-304-817-152
)	
Petitioners.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>)	

(Petitioner) protested the Notice of Deficiency Determination (Notice) for tax years 2021 and 2022 dated July 27, 2023. The Tax Commission reviewed the matter and hereby issues its final decision to uphold the Notice.

Background

Petitioner filed Idaho Individual Income Tax Returns for tax years 2021 and 2022, reporting \$0 Idaho taxable income for both years. On his federal income tax return for tax year 2021, Petitioner reported no income. On his 2022 federal return, he reported \$419.45 of taxable interest. For both years, Petitioner included Form 4852¹ and Form W-2 SUB² instead of copies of W-2s issued to him by the companies for which he worked. Each substitute form contained a statement to this effect: the W-2 sent by the payer incorrectly reported that he received wages but correctly reported the amounts withheld for federal income tax, state income tax, Social Security tax, and Medicare tax. The Tax Commission accepted Petitioner’s Idaho returns for tax years 2021 and 2022 as valid and processed them as filed. Petitioner received a refund of \$4,923 tax from his 2021 Idaho return, plus \$31.56 of refund interest.

¹ The full name of this IRS form is *Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*

² The full name of this Idaho form is *Idaho Substitute W-2 Wage and Tax Statement.*

The Tax Commission's Audit Division (Audit) reviewed Petitioner's 2021 and 2022 Idaho returns and determined that Petitioner did not calculate his Idaho taxable income correctly. Audit issued the Notice on July 27, 2023, to include wages of \$106,093 for 2021 and \$101,361 for 2022, to allow the standard deduction amount for 2021, and to include the \$10 Permanent Building Fund tax for both years. Audit also added penalties and interest to the calculated tax due for each year.

Petitioner sent a letter on September 1, 2023, protesting the Notice (see the Law & Analysis section below for further details about Petitioner's protest). Audit sent Petitioner a letter on September 6, 2023, acknowledging the protest and informing him that his file was being transferred to the Tax Commission's Tax Appeals unit (Appeals) to continue the redetermination process. Appeals sent Petitioner a letter on October 25, 2023, informing him of his appeal rights. Petitioner responded to this letter reiterating his protest position. He did not request a hearing or provide any new information.

Law & Analysis

Petitioner's protest of the Notice and his subsequent response to the redetermination letter from Appeals include the following arguments:

- He did not have any taxable income other than what he reported on his 2021 federal return.
- Each W-2 he received "erroneously alleges that [he], a living man, received 'wages' as defined in IRC³ section 3401(a) and section 3121(a) from the 'payer' during a taxable activity."
- His labor is what is being taxed and he has a natural right to the fruits of his labor.
- "What [he] receive[s] in exchange for [his] labor does not inherently fall within the definition of the IRC term 'income'."

³ IRC is the abbreviation for Internal Revenue Code, contained in U.S. Code Title 26.

- His labor is not connected to a taxable activity within a trade or business, as an employee (as defined in IRC section 3401(c)), or within employment (as defined in IRC section 3121(b)).

Petitioner does not provide any legal reasoning in his correspondence with Audit or Appeals for his holding these positions; he merely states his beliefs. Petitioner also says in his protest, “I am sure that the IRC definitions don’t only apply to certain chapters and subtitles. According to your letter [referring to the Notice] the state of Idaho agrees and adheres to the IRC code [sic] when it comes to income tax. If it differs could you please explain how.”

Petitioner’s positions on these various issues mimic those often found in arguments brought forth by so-called “tax protesters” or “tax defiers⁴.” The same can be said of Petitioner’s use of the term “a living man” in reference to himself. Petitioner’s limited explanations, however, do not encompass the full breadth and depth of the tax protester movement.

Idaho Code section 63-3002 states that the legislature’s intent was “to make the provisions of the Idaho act identical to the provisions of the [IRC] relating to the measurement of taxable income” so that the taxable income reported to the Internal Revenue Service is the same amount reported to the state, except for adjustments required or allowed by Idaho law. This is to be achieved “by the application of the various provisions of the [IRC] relating to the definition of income, . . . deductions (personal and otherwise) . . . and other pertinent provisions to gross income as defined therein, resulting in an amount called ‘taxable income’ in the [IRC], and then to impose the provisions of this act thereon to derive a sum called ‘Idaho taxable income’.”

⁴ An alternative term used by the Tax Court in its decision for *Scott F. Wnuck v. Commissioner*, 136 TC 498 to describe those who make frivolous anti-tax arguments and “enjoy the benefits of American security and stability while refusing to shoulder their portion of the responsibility.”

There are several differences between IRC and Idaho Code in determining the respective federal taxable income and Idaho taxable income. For example: federal net operating losses and Idaho net operating losses are calculated differently; some types of income are specifically excluded from federal taxable income but not from Idaho taxable income, and vice versa; Idaho does not conform to IRC when it comes to special depreciation allowance (bonus depreciation). Based on available information, Petitioner was not allowed or required to make any adjustments for differences between IRC and the Idaho Income Tax Act, so for the purpose of calculating his Idaho taxable income, Idaho does agree and adhere to IRC.

Petitioner cites four specific IRC sections in his protest: 3401(a); 3121(a); 3401(c); and 3121(b).

- IRC section 3121(a) begins “For purposes of this chapter, the term ‘wages’ means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash,” then continues to enumerate specific exceptions to the general definition.
- IRC section 3121(b) begins “For purposes of this chapter, the term ‘employment’ means any service, of whatever nature, performed (A) by an employee for the person employing him,” then continues with further clarification.
- IRC section 3401(a) begins “For purposes of this chapter, the term ‘wages’ means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash,” then continues to enumerate specific exceptions to the general definition.
- IRC Section 3401(c) reads “For 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, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term ‘employee’ also includes an officer of a corporation.”

A plain-language reading indicates that these sections are limited in their application, as they all begin with the phrase “For purposes of this chapter.” The definitions put forth have no application to any other chapter in IRC or any other code section unless referenced directly. IRC section 3121 is contained within Chapter 21, *Federal Insurance Contributions Act*. IRC section 3401 is contained within Chapter 24, *Collection of Income Tax at Source on Wages*. Both chapters are contained within Subtitle C, *Employment Taxes*. The process for determining taxable income is governed by Subtitle A, *Income Taxes*, which covers sections 1 through 1564. The IRC sections Petitioner references do not support his stance that he had no taxable income and are irrelevant to the calculation of his income tax.

IRC section 63(a) reads “Except as provided in subsection (b), for purposes of this subtitle, the term ‘taxable income’ means gross income minus the deductions allowed by this chapter (other than the standard deduction).” IRC section 63(b) reads “In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term ‘taxable income’ means adjusted gross income, minus (1) the standard deduction, (2) the deduction for personal exemptions provided in section 151, (3) any deduction provided in section 199A, and (4) the deduction provided in section 170(p).”

IRC section 62 defines “adjusted gross income” as gross income minus deductions specified within section 62 (there are a number of cross-references to allowable deductions that are explained in other sections of IRC).

Gross income is defined in IRC section 61; it begins “Except as otherwise provided in this subtitle [Subtitle A], gross income means all income from whatever source derived, including (but not limited to) the following items” and is followed by a list of common types of income. The first

specified item is “compensation for services.” It should be noted that section 61 does not specify wages as an income category to include in gross income.

Petitioner states in his protest letter and on his Forms 4852 that his W-2 alleges he received wages “as defined in IRC section 3401(a) and section 3121(a).” As previously stated, these sections of IRC are unrelated to the calculation of taxable income. Additionally, the employer instructions for Form W-2 do not refer to either of these sections or to any other specific definition of wages.

Petitioner indicates that his pay from _____ and _____ during tax years 2021 and 2022 is not income as defined in IRC. This may technically be true, but only because the term “income” is not defined separately in IRC. It does, however, fall under the definition of “gross income” (which is part of “adjusted gross income” and subsequently “taxable income”) because it is compensation for services that Petitioner provided for these two businesses.

Petitioner states that his labor is not connected to a taxable activity in a trade or business, not performed as an employee (specifying the definition contained in IRC section 3401(c)), and not connected to employment (specifying the definition contained in IRC section 3121(b)). It is not Petitioner’s labor itself, but rather the compensation he receives in exchange for his labor, that is subject to taxation. Petitioner does not have to be engaged in his own trade or business for the compensation he receives to be included in gross income. If Petitioner were engaged in some activity without a profit motive (and therefore not a trade or business under IRS guidelines) and received compensation for services he provided to others, that payment must be included in gross income. Petitioner does not provide any supporting argument or information for his positions. As

noted earlier, the two IRC sections cited are not related to the calculation of income tax and are irrelevant for purposes of making this decision.

Based on an evaluation of all available information, the Tax Commission determined that Petitioner's gross income must include the compensation he received from _____ and _____ during tax years 2021 and 2022. The Tax Commission cannot determine whether Petitioner qualifies for any deductions allowed under IRC section 62, so his gross income and adjusted gross income must be the same amount. The Tax Commission determined that Petitioner is eligible to claim the standard deduction for both tax years 2021 and 2022.

Idaho Code section 63-3082 provides that every person required to file an Idaho income tax return must pay an excise tax (permanent building fund tax) of \$10. Idaho Code section 63-3030(a)(1) requires each individual who is a resident of Idaho to file an Idaho income tax return if required to file a federal return. Internal Revenue Code section 6012 states that the requirement to file a federal return is based on gross income. Since Petitioner received gross income above the threshold amount for filing a return for tax years 2021 and 2022, he must pay the \$10 permanent building fund tax.

The Bureau added interest and penalty to Petitioner's tax deficiency. The Tax Commission reviewed those additions and finds them to be appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

Conclusion

The Tax Commission finds that Petitioner received gross income that he did not include in calculating his Idaho taxable income for tax years 2021 and 2022. Petitioner has not provided sufficient evidence or credible argument to show why the Notice is incorrect.

THEREFORE, the Notice dated July 27, 2023, and directed to _____ is hereby
UPHELD and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2021	\$5,847	\$231	\$553	\$6,631
2022	5,107	39	46	<u>5,192</u>
			Refund Held	<u>(4,323)</u>
			TOTAL DUE	<u>\$7,500</u>

The Tax Commission DEMANDS immediate payment of this amount. Interest is
calculated through May 20, 2024.

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.
