

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-832-035-328
)	
Petitioner.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>)	

(Petitioner) protested the Billing Letter for tax years 2019 and 2020, dated October 12, 2023. This protest carried to the Notice of Deficiency Determination (Notice) for the same years, dated November 17, 2023. The Tax Commission reviewed the matter and hereby issues its final decision to modify the Notice.

Background

On April 11, 2023, Petitioner sent the Tax Commission amended Idaho income tax returns for tax years 2019 and 2020, removing reported income. For 2019, Petitioner reduced “federal adjusted gross income from federal Form 1040” from \$62,778 to \$0 and “Idaho taxable income” from \$44,428 to \$0. For 2020, Petitioner reduced “federal adjusted gross income from federal Form 1040” from \$153,739 to \$16,897 and “Idaho taxable income” from \$135,089 to \$0. Petitioner included forms stating that the wages reported on the W-2 are incorrect and do not qualify as wages as defined in Internal Revenue Code (IRC) sections 3401 and 3121.

Audit reviewed these returns and, on October 12, 2023, issued a Billing Letter denying the changes on the amended Idaho returns. Petitioner protested the Billing Letter on the grounds that only employees receive wages, that she is not an employee, and that the company from which she earns a living has nothing to do with any source or privilege that would make her earnings taxable in nature. She went on in her protest letter to discuss the definitions of “employee” and “trade or business” in IRC and included a quotation from a court case regarding the interpretation of

definitions used in statutes¹. She continued by saying she is not among the limited classes of persons subject to income tax, that she has never received “taxable income,” and that she is not a “taxpayer.” She then demanded the name and position title of the individual who made the “determination, by law, of ‘frivolity’ over [her] return.” After that, she discussed bad payer information, frivolous returns, invalid returns, and refund of overpayments, and closed by stating she may take legal action “[i]f the pay that was illegally withheld from [her] is not returned in full.” Petitioner attached numerous exhibits including a copy of a memorandum from the IRS Office of Chief Counsel (200114033, 4/6/2001), a printed screenshot of a portion of the IRS webpage regarding Form W-2, *Wage and Tax Statement*, a printed copy of IRC sections 3401 and 7434, and a printed copy of select pages from IRC section 7701.

In accordance with standard procedures, Audit issued the Notice on November 17, 2023, which included a statement that Petitioner’s protest of the Billing Letter would automatically apply to the Notice. Along with the Notice, Audit sent a letter acknowledging Petitioner’s protest and informing her that the case would be forwarded to the Tax Commission’s Appeals unit (Appeals) for further consideration.

Appeals sent a letter on December 26, 2023, informing Petitioner of the options available for redetermining a protested Notice. Petitioner responded with two identical copies of the same information, one received January 19, 2024, and the other received January 24, 2024. Much of this response to Appeals was taken verbatim from her protest letter to Audit. Petitioner included a statement that “[she is] not a protester and [has] done nothing but rebut the erroneous information returns stating that [she] received taxable income.” To Appeals she also wrote, “It is apparently

¹ “When a statute includes explicit definitions, we must follow that definition, even if it varies from that term’s ordinary meaning.” “As judges, it is our duty to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it.” *Meese v. Keene* U.S. 465, 484 (1987)

obvious that you have not reviewed the US Code within the statutory meaning” and quoted the Code of Federal Regulations (CFR) 1.6001. Additionally, she stated that Subtitle A of US Code 26 imposes income taxes on nonresident aliens with US sourced income, foreign corporations with US sourced income, and US citizens living abroad with foreign earned income, but does not impose income tax on most citizens. Petitioner mentioned Subtitle C of US Code 26 which imposes employment taxes on employees “as defined by [section] 3401(c).” This letter concluded with demands made of Appeals, including rescinding the Notice. Also attached as an exhibit were several quotations from court cases from 1916, 1937, and 1972, a 1943 quotation from testimony of a former Treasury Department legislative draftsman, and another quotation from 1979.

Appeals sent a follow-up letter on March 7, 2024, acknowledging receipt of Petitioner’s first response. Appeals informed Petitioner that the authority to rescind the Notice as requested lies with Audit or the Commissioners and asked some clarifying questions:

- Do you dispute the fact that _____ paid you during 2019 and 2020? Do you dispute the amount they paid you?
- Please tell me why [this business] paid you.
- When you say you didn’t receive taxable income, what do you mean? What is your definition of taxable income?

Appeals received Petitioner’s response to this letter on April 4, 2024. Once again, the bulk of the response was taken verbatim from the previous response, although slightly rearranged.

Petitioner provided answers to the questions Appeals asked in the March 7 letter:

- She does not dispute that she was paid, but says it is not of a taxable source. She did not mention whether or not she disputes the amount she was paid.
- She was paid because she worked for the payer, but she was not an “employee.”
- “‘Taxable income’ is not Defined in the US Code, however through *Context Clues* throughout the Internal Revenue Code Title 26, Taxable Income can only mean remuneration paid to Nonresident Aliens and Foreign Corporations per 26 USC §1401 and §1402 which is where the “Every person is made liable” in the Code. And is found on the instructions for W-2’s which States ‘every employer engaged in Trade or Business who pays remuneration (definition below). This does not include US Citizens working in the United States. However, the Code does include

US Citizens working abroad earning US source income. ‘Taxable income’ is not to be confused with ‘Wages’ which are very different and are defined under 26 US Code §3401(a). ‘Certain government workers’ earn wages. This is also iterated in 26 USC §6331 (below)”

Petitioner also quoted a portion of 26 CFR section 301.4203-3, describing special rules for claiming a refund of overpayment on an income tax return. Petitioner ended this letter by discussing violation of 18 U.S. Code section 1512 (Tampering with a witness, victim, or informant) and section 872 (Extortion by officers or employees of the United States) and providing information regarding the penalties for being an officer or employee of the United States guilty of extortion along with civil damages for certain unauthorized collection actions.

At no time during the redetermination process did Petitioner request an informal hearing. Petitioner has simply stated her position three times and provided minimal additional information. The Tax Commission now makes its final decision based on the information currently available.

Law & Analysis

Idaho Code section 63-3002 states that residents of Idaho are subject to a tax measured by Idaho taxable income. Idaho taxable income (defined in Idaho Code section 63-3011C) must be equal to federal taxable income (see Idaho Code section 63-3011B), except as required or allowed by provisions in Idaho Code. Idaho Code section 63-3030 mandates that any Idaho resident required to file a federal income tax return is also required to file an Idaho income tax return.

Contrary to Petitioner’s statement, “taxable income” is defined in IRC section 63. In Petitioner’s case, IRC section 63(b) would apply because she did not itemize deductions, so her “taxable income” would be her adjusted gross income (AGI) minus the standard deduction². AGI

² Personal exemptions provided in IRC section 151 are set to \$0 for tax years 2018 through 2025. Petitioner did not claim, and does not appear to be eligible to claim, any deduction provided in IRC section 199A or section 170(p).

is defined in IRC section 62 as gross income minus the deductions listed in IRC section 62(a)(1) – (22). Gross income is defined in IRC section 61 as all income from whatever source derived, including (but not limited to) the specific items listed in IRC section 61(a)(1) – (14), except as provided in IRC Subtitle A. The first item listed is “Compensation for services, including fees, commissions, fringe benefits, and similar items.” The specific term “wages” is never used in the definition of gross income or as an example.

Petitioner argues that she is not among the classes of people subject to income tax. She states that only nonresident aliens with US source income, foreign corporations with US source income and US citizens residing abroad with foreign earned income are subject to income tax. She has failed to provide any legal or logical reasoning to support such a position. Therefore, the Tax Commission finds that Petitioner is subject to both federal and Idaho income tax and as such meets the definition of “taxpayer” for both federal and Idaho purposes.

Petitioner stated multiple times in her correspondence with the Tax Commission that she did not receive “wages,” because she was not an “employee” and the company that paid her was not an “employer.” In IRC section 3401(a) (the section referenced in Petitioner’s correspondence), wages are defined as follows: “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.” This general definition is followed by a list of exceptions, none of which apply to Petitioner.

Employer is defined in IRC section 3401(d) as follows: “For purposes of this chapter, the term ‘employer’ means the person for whom an individual performs or performed any service, of

whatever nature, as the employee of such person.” This is again followed by some exceptions which do not appear to apply in Petitioner’s case.

Employee is defined in IRC section 3401(c) as follows: “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.”

If the concept of following an explicit definition found in statute – as Petitioner found in the *Meese v. Keene* quotation – is applied to Petitioner’s use of the definitions of “wages,” “employee,” and “employer” in IRC section 3401(a), (c), and (d), then Petitioner’s argument about not earning wages, not being an employee, and her payer not being an employer becomes moot. All three definitions begin with the phrase “For purposes of this chapter,” meaning they do not apply to anything outside that chapter. Section 3401 is found in IRC Chapter 24, *Collection of Income Tax at Source of Wages*, which has no bearing on the calculation of taxable income or whether income is of a taxable nature or not.

Additionally, only two of these definitions are explicit: “wages” and “employer.” Both definitions incorporate the term “means,” which is then followed by a clear description of what or who qualifies. The definition for “employee” uses the term “includes,” which is then followed by illustrative examples, but not an exhaustive list. The idea that the list is not exhaustive is supported by the fact that “employee” is defined separately in IRC section 7701(a)(20) with illustrative examples which do not correspond with the examples used in IRC section 3401(c), and that IRC section 3401(c) uses the term “employee” in its definition of “employee.” This implies that there is already an understanding of what an employee is, and the definition is only providing examples. Also, IRC section 7701(c) states: “The terms ‘includes’ and ‘including’ when used in a definition

contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.” “In this title” refers to Title 26, the Internal Revenue Code. Petitioner is wrong in her belief that “employee is certain government employees as defined in IRC Title 26 section 3401(c).” While it is true that officers, employees, and elected officials of the United States, a State, etc., and an officer of a corporation are considered employees for purposes of IRC Chapter 24, they are not the only workers who qualify.

In Revenue Ruling 2006-18, 2006-1 CB 743, the IRS warns of the consequences of using this argument:

This revenue ruling emphasizes to taxpayers, promoters, and return preparers that all individuals are subject to federal income tax. This revenue ruling also provides that the terms “employee” and “wages” carry the meanings given to them in the Internal Revenue Code, regulations, and publications of the Internal Revenue Service. Under the Internal Revenue Code, wages include any compensation received due to the performance of services as an employee, and the term employee includes any individual for whom the legal relationship between the individual and the person for whom the individual performs services is the legal relationship of employer and employee. All wages are included in gross income for purposes of determining federal income tax liability, and are also subject to federal employment taxes. Any argument that Forms W-2 only record and report payments made to federal employees, or that only federal employees or residents of the District of Columbia or federal territories and enclaves earn wages subject to tax, has no merit and is frivolous.”

The IRS has imposed, and courts have upheld, civil and criminal penalties for people using this argument. See, for example: *Taliaferro v. Freeman*, 595 F App’x 961, 962-63 (11th Cir. 2014); *Monterro v. Commissioner*, 354 F App’x 173 (5th Cir. 2009); *Sullivan v. United States*, 788 F.2d 813, 815 (1st Cir. 1986); *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985); *United States v. Hendrickson*, 100 A.F.T.R.2d (RIA) 2007-5395 (E.D. Mich. 2007); *Briggs v. Commissioner*, T.C. Memo 2016-86; and *Waltner v. Commissioner*, T.C. Memo 2014-35.

Based on all of the above information, the Tax Commission finds that Petitioner meets the definition of “employee,” _____ meets the definition of

“employer,” and remuneration paid to Petitioner by
for services she provided meets the definition of “wages.” Based on information provided to the
Tax Commission by _____ Petitioner received enough
gross income in 2019 and 2020 to be required to file federal and Idaho returns for both years. Even
if Petitioner had not received “wages,” she still had received enough compensation for services
(see IRC section 61(a)(1)) as gross income to be required to file.

The Tax Commission finds the amount reported on line 3, *Idaho Taxable Income Revised*,
of the Notice to be a reasonable calculation of Petitioner’s Idaho taxable income for tax years 2019
and 2020. While the Notice restores Petitioner’s taxable income on her Idaho returns, it does not
restore the credits she claimed on her original returns but not on her amended returns. In the interest
of fairness, the Tax Commission decided to restore them and calculated the adjustment to Idaho
tax as shown below:

	<u>2019</u>	<u>2020</u>
Tax based on income	\$2,545	\$8,812
Less: Credit for contributions to Idaho youth & rehabilitation facilities	0	(25)
Less: Idaho Child Tax Credit	(410)	(205)
Plus: Permanent Building Fund tax	10	10
Less: Grocery credit	(300)	(300)
Less: Idaho withholding	<u>(3,299)</u>	<u>(8,313)</u>
Total overpayment per redetermination	(1,454)	(21)
Less: Overpayment per amended return	<u>(3,289)</u>	<u>(8,303)</u>
Increase to tax	<u>\$1,835</u>	\$8,282

Petitioner’s comments about a determination of “frivolity” over her return, and about valid
and invalid returns are irrelevant to this decision. Audit made no determination that Petitioner’s
amended returns were frivolous or invalid. The returns were processed and then selected for
examination. A valid return does not necessarily equate to an accurate return. The Tax Commission
is authorized 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 Petitioner's returns are to bring them into compliance with Idaho income tax statutes.

Conclusion

Petitioner filed amended Idaho income tax returns for 2019 and 2020 reporting \$0 of income. The Tax Commission determined that these returns were valid but incorrect. Based on available information, the Tax Commission determined Petitioner's Idaho taxable income and tax liability for each year.

THEREFORE, the Notice dated November 17, 2023, and directed to _____ is hereby MODIFIED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>REFUND HELD</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2019	\$1,835	(1,835)	\$0	\$0	\$0
2020	8,282	(8,282)	0	0	<u>0</u>
					\$0

As no additional tax is due, no demand for immediate payment is made.

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.
