



Petitioners stated they do not owe the state of Idaho any money. Petitioners stated by law the income tax is a choice and that they opted out. Petitioners stated they can show that they do not owe Idaho the amount asserted.

The Bureau acknowledged Petitioners' protest and referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a Notice of Deficiency Determination. Petitioners did not respond. Seeing that Petitioners had an opportunity to provide whatever other information or documentation they wanted the Tax Commission to consider, the Tax Commission decided the matter based upon the information available.

#### **LAW AND ANALYSIS**

Idaho Code section 63-3030 provides the income thresholds for filing Idaho individual income tax returns. The information the Bureau gathered clearly shows Petitioners received income during the years in question that exceeded the threshold amount for filing Idaho income tax returns. Therefore, Petitioners were required to file Idaho individual income tax returns.

Petitioners stated they opted out of the income tax; however, they did not provide any support for allowing them to do so. Petitioners' statement is most likely based on the Code of Federal Regulations, Title 26, Chapter I, Subchapter H, Part 601, Subpart F, section 601.602 that makes the statement, "The tax system is based on voluntary compliance, and the taxpayers complete and return the forms with payment of any tax owed." This statement along with statements made by the courts have been misconstrued or taken out of context. The entire section of the regulation reads,

The Internal Revenue Service develops forms and instructions that explain the requirements of the Internal Revenue Code and regulations. The Service distributes the forms and instructions to help taxpayers comply with the law. The tax system

is based on voluntary compliance, and the taxpayers complete and return the forms with payment of any tax owed.

Read in context, the regulation statement has the meaning that taxpayers are to volunteer their information to comply with the law. The law states a tax must be paid. Citizens and residents voluntarily comply with the law rather than being told what is owed as their tax.

When confronted by claims that income taxes are "voluntary", courts readily explain that the payment of income tax is mandatory, not optional. Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary. *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993), (per curiam); *Wilcox v. Commissioner of Internal Revenue*, 848 F.2d 1007, 1008 (9th Cir. 1988). The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), requires that every individual who earns a threshold level of income must file a tax return. *United States v. Pottorf*, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to criminal penalty. *Id.*, (citing 26 U.S.C. § 7203). *United States v. Hartman*, 915 F.Supp. 1227 (M.D.Fla. 1996). The federal income tax is not voluntary, and a person may not elect to opt out of the federal tax laws by a unilateral act of revocation and rescission. See, e.g., *Lesoon v. Commissioner of Internal Revenue*, 141 F.3d 1185, 1998 WL 166114 (10th Cir. 1998); *United States v. Gerads*, supra.; *Damron v. Yellow Freight System, Inc.*, 18 F. Supp. 2d 812, 819-20 (E.D. Tenn. 1998), *aff'd*, 188 F.3d 506 (6th Cir. 1999)." *United States v. John L. Sasscer*, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000).

Considering the above cited cases along with numerous others and the Idaho legislature's intent to impose a tax on residents of this state (See Idaho Code section 63-3002.), it is the duty of all residents of Idaho to file income tax returns if their income exceeds the minimum filing requirements of Idaho Code section 63-3030. There is no opt out provision.

The Tax Commission reviewed the returns the Bureau prepared. The Bureau determined Petitioners' taxable income from information returns filed by third-party sources. Those information returns included W-2 Wage and Tax Statements and Forms 1099 Miscellaneous Income. The Bureau also found that Petitioners were members of an LLC that was authorized to do business in Idaho. However, because that LLC did not file income tax returns, the Bureau estimated Petitioners' pass-through income based on an audit of the LLC where the Bureau determined the LLC's income from Forms 1099 and reports the LLC filed for IFTA (International Fuel Tax Agreement).

Petitioners' protest included a statement that they had no involvement with the LLC after March 2015. According to the Idaho Secretary of State, the LLC's initial registration with Idaho was January 22, 2015. Petitioners stated they were bought out in March 2015. Petitioners provided the names and addresses of the individuals that purchased their interest.

Based on that information, the Tax Commission determined Petitioners' income should not include the pass-through income from the LLC. The Tax Commission found the information supports that Petitioners were no longer involved with the LLC. Therefore, the Tax Commission removes the pass-through income from the returns the Bureau prepared.

Other than Petitioners' opt-out argument, they provided nothing else to show the returns prepared by the Bureau were incorrect. Therefore, the Tax Commission finds the returns, adjusted for the pass-through income, to be a reasonable representation of Petitioners' taxable income for the years in question.

## **CONCLUSION**

Petitioners received income in the tax years 2013 through 2015 and 2017 through 2019 that exceeded the threshold for filing Idaho income tax returns. Petitioners were required to file Idaho

income tax returns for those years. Petitioners argued that they opted out of the income tax and that the LLC income was not their income. The Tax Commission agrees with Petitioners regarding the LLC pass-through income; however, it finds Petitioners’ opt-out argument frivolous and without merit. Therefore, the Tax Commission modifies the Bureau’s returns by subtracting the pass-through income and upholds the Notice of Deficiency Determination as accordingly modified.

The Bureau added interest and penalty to Petitioners’ Idaho tax. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046. Interest is computed to June 30, 2023.

THEREFORE, the Notice of Deficiency Determination dated January 3, 2022, directed to  
is AFFIRMED as MODIFIED.

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>
2013	\$3,105	\$776	\$1,064	\$4,945
2014	7,225	1,806	2,192	11,223
2015	400	100	105	605
2016	0	0	0	0
2017	6,201	1,550	1,197	8,948
2018	232	58	35	325
2019	227	57	23	<u>307</u>
			TOTAL DUE	<u>\$26,353</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 \_\_\_\_\_ 2023.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2023,  
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.

---

---