BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 18521
[Redacted],	)	
	)	DECISION
Petitioner.	)	
	)	

PROCEDURAL BACKGROUND

On December 15, 2004, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Petitioner), asserting income tax, penalty and interest in the amount of $14,527 for the taxable years 1997 through 2002. The notice advised the Petitioner that if he disagreed with the deficiency determined by the Bureau he could petition the Tax Commission for a redeterimination.

On January 3, 2005, the Petitioner filed a letter of protest that the Commission treated as a petition for redetermination. The Commission notified the Petitioner that he could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the Bureau, or, in the alternative, submit additional information to show why the deficiency should be redetermined. The Petitioner submitted additional information that was made part of the file; however, the Petitioner declined an informal conference.

Therefore this decision is based on the information contained in the Commission's files. The Commission has reviewed the files, is advised of their contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau.

THE AUDIT

This is a nonfiler case. The Petitioner lived in [Redacted] County, Idaho during the taxable years at issue, but the Petitioner did not file an Idaho individual income tax return for any of the years. The Petitioner had filed tax returns for previous years.

A Tax Enforcement Specialist (specialist) of the Bureau contacted the Petitioner to inquire why the Petitioner had not filed returns. The Petitioner responded that he was not required to file a return because his income was derived from nontaxable sources. The specialist recognized that the Petitioner's statements incorporated arguments commonly made by tax protestors: arguments that the Tax Commission repeatedly has addressed and rejected. For instance, the Petitioner did not deny that he received wages or payment for services he performed, but he insisted such payment was not taxable because it technically was not "income."

Idaho Code § 63-3030 provides that every resident who has gross income, as defined by Section 61(a) of the Internal Revenue Code, exceeding a specified dollar amount is required to file an Idaho individual income tax return. The filing threshold for a single individual less than 65 years old was:

$6,800 for the taxable year 1997;

$6,950 for the taxable year 1998;

$7,050 for the taxable year 1999;

$7,200 for the taxable year 2000;

$7,450 for the taxable year 2001; and

$7,700 for the taxable year 2002.

The returns filed by the Petitioner for previous taxable years indicated the Petitioner had received gross income in excess of these amounts.

The specialist asked the Petitioner for information that would verify the amount of income he received and whether or not he was required to file tax returns for the years in question. The Petitioner refused to provide the requested information, stating that if he were required to provide the information or file a return, it would violate his constitutional right that protects against self-incrimination.

Because the Petitioner declined to provide the requested information, the specialist obtained income and expense information from the Petitioner's bank. In examining loan applications and other related documents, the specialist determined the Petitioner had reported to the bank that he received approximately $2,500 a month in income. Based on this information, the specialist prepared provisional returns for the Petitioner. The specialist provided the Petitioner with personal deductions and exemptions, grocery credits and a credit for withholding taxes. The provisional returns indicated tax deficiencies for each of the taxable years 1997 through 2002.

The specialist then issued a Notice of Deficiency Determination as indicated above. The Notice of Deficiency Determination included an explanation of the information the specialist relied upon, a copy of the provisional returns prepared by the specialist, a document showing the calculation of interest, and an explanation of the Petitioner's right to request a redetermination of the deficiency.

PROTESTED ISSUES

The Petitioner seeks a redetermination of the deficiency on several grounds. Although the Petitioner filed tax returns for previous taxable years, the Petitioner now believes he is not required to report his wages and other compensation on tax returns or pay Idaho individual income taxes because: (1) the term "income" is not defined in the tax code; (2) wages and other compensation for labor is not "income" subject to tax, (3) Idaho lacks the jurisdiction to impose the individual income tax; (4) he is a natural born sovereign citizen and as such he is not subject to the taxing jurisdiction of Idaho; (5) he is not a resident of the state of Idaho and, therefore, he is not subject to Idaho tax law; (6) he has not entered into a consensual contract with the state of Idaho that allows the state to impose a tax; (7) federal and state taxes are based solely on voluntary compliance; (8) the statutory requirement of filing a return violates his Fifth Amendment right against self-incrimination; (9) the Idaho income tax is an unconstitutional excise tax; and (10) the Tax Commission did not have the authority to issue a Notice of Deficiency Determination.

LAW AND ANALYSIS

State and federal courts have rejected these common tax protestor themes time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned,

> Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. "Tax protesters" have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The Petitioner asserts some of the same arguments discussed by Judge Easterbrook. He believes his tax obligation has somehow been eliminated despite the fact that he lives in Idaho and earned a living in Idaho. Simply stated, the Petitioner's arguments are not supported by fact or law.

1. The Petitioner's Argument Misconstrues the Supreme Court Discussion about the Definition of "Income."

The Petitioner claims he is exempt from taxation under the Idaho Income Tax Act because he earns no money and is not involved in "commerce." The Petitioner argues the term "income" is not defined under state or federal law and that the U.S. Supreme Court said that "income" is limited to a corporate profit. This is not exactly what the Court said.

In Merchants' Loan & Trust Company v. Smientanka, 255 U.S. 509 (1921), the Court said that the Corporation Excise Tax Act of August 5, 1909, defined the word income. The Court stated it was obvious that the decisions written in developing the definition of the word "income" as used in the

Corporation Excise Tax Act of 1909 has the same meaning and content in the Income Tax Acts of 1913, 1916 and 1917. This does not mean that income is only corporate profit.

2. Wages and Other Compensation for Labor Is "Income" for Income Tax Purposes.

As the Court stated in Eisner v. Macomber, 252 U.S. 189 (1920), the term "income" is defined for income tax purposes as gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. One further note on the definition of the word "income." The Court in Merchant's stated, "In determining the definition of the word 'income' thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definitions quoted, what it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution."

The Supreme Court of Idaho also stated that the terms used in statutes are given their plain, ordinary meaning. The plain, ordinary meaning of a term can be found in the dictionary definition of the term. *See* Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993). Webster's New Collegiate Dictionary defines income as a gain or recurrent benefit usually measured in money that derives from capital or labor.

Contrary to what the Petitioner asserts, the courts have consistently held that wages or "compensation for labor" is income for income tax purposes. Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986); United States v. Lawson, 670 F.2d 923 (10th Cir. 1982); United States v. Buras, 633 F.2d 1356 (9th Cir. 1980); Mitchell v. Agents of State, 105 Idaho 419, 425 (1983); State v. Staples, 112 Idaho 105, 107 (Ct. App. 1986); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 575 (Ct. App. 1986).

Idaho Code §63-3022 defined the term "taxable income" to mean "'taxable income' as defined in section 63 of the Internal Revenue Code, adjusted as provided" in the Idaho Income Tax Act. Section 63 of the Internal Revenue Code defines taxable income as "gross income minus the deductions allowed under this chapter." Section 61 of the Internal Revenue Code provides that, except as otherwise provided in Subtitle A of the Internal Revenue Code, "gross income means all income from whatever source derived." Idaho has incorporated these provisions in its tax laws.

> **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; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; **to impose a tax on residents of this state measured by Idaho taxable income wherever derived** and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. **All of the foregoing is subject to modifications in Idaho law** including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Idaho Code § 3002 (Emphasis added). As incorporated into the Income Tax Act by Idaho Code § 63-3002, an individual is subject to Idaho income tax on his income from all sources, unless express federal or state exemptions, adjustments, or limitations apply. The Petitioner has not provided any information to establish that his income is exempt under the Internal Revenue Code or under any other law.

3. <u>Idaho has the Jurisdiction to Tax the Petitioner</u>.

The Petitioner claims that the state of Idaho is without the power or authority to impose a tax on him because, according to the Petitioner, he is not a citizen of the United States and is not subject to its jurisdiction. The Petitioner's convoluted logic notwithstanding, the state of Idaho does not derive its jurisdiction to tax from whether or not an individual is a citizen of the United States. *See* <u>People of State of New York, ex rel. Cohn v. Graves</u>, 300 U.S. 308, 312-13 (1937) "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protections of its laws are inseparable from responsibility for sharing the costs of government."; <u>Shaffer v. Carter</u>, 252 U.S. 37, 52 (1920) "[J]ust as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein."

Idaho Code §63-3024 imposes an income tax on every resident individual measured by his taxable income. Resident is defined in Idaho Code §63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who is domiciled in this state. The Idaho Legislature has clearly set forth that the Idaho income tax applies to residents of this state; and the Legislature has defined the term resident. The Petitioner, who resided in Idaho, has presented no evidence supporting his claim that he is not a resident of, or otherwise subject to the jurisdiction of, Idaho.

4. <u>Idaho's Jurisdiction to Tax is Not Limited to Corporations and State-Authorized Entities</u>.

The Petitioner claims the state of Idaho is without the power or authority to impose a tax on "Sovereign natural born Citizens of the Idaho Republic." The gist of the Petitioner's sovereignty argument is that the state has the power to tax only those entities which it creates or for which it authorizes creation. Thus, a state may tax a corporation that is created under state authority, but may not tax "natural born citizens."

Under our federalist system of government, the power to raise revenue to support the functioning of the government [i.e., the power to tax] is generally considered a concurrent state and federal power. The power of the states to tax the income of individuals was first established by the United States Supreme Court in Shaffer v. Carter, 252 U.S. 37 (1920). In that case, Shaffer brought suit to enjoin the state of Oklahoma from collecting any tax assessed against him under the state's income tax law. Although Shaffer was a nonresident of Oklahoma, the Court found that the Oklahoma tax on his Oklahoma source income was constitutional. Justice Pitney, writing for the Court, stated:

> In our system of government the states have general dominion, and, saving as restricted by particular provisions of the federal Constitution, complete dominion over all persons, property, and business transactions within their border; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses.

Id. at 51. Justice Pitney went on to write that:

> Income taxes are a recognized method of distributing the burdens of government, favored because requiring contributions from those who realize current pecuniary benefits under the protection of the government, and because the tax may be readily proportioned to their ability to pay. Taxes of this character were imposed by several of the states at or shortly after the adoption of the Federal Constitution.
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> The rights of the several states to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of this court. In *McCulloch v. Maryland*, 4 Wheat. 316, while denying their power to impose a tax upon any of the operations of the federal government, Mr. Chief Justice Marshall, speaking for the court, conceded (pp. 428-429) that the states have full power to tax their own people and their own property, and also that the power is not confined to the people and property of a state, but may be exercised upon every object brought within its jurisdiction saying: "It is obvious, that it is an incident of sovereignty, and is coextensive with that to which it is an

> incident. All subjects over which the sovereign power of a state extends, are objects of taxation," etc.
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> In *Michigan Central R.R. Co. v. Powers*, 201 U.S. 245, the court, by Mr. Justice Brewer, said (pp. 292, 293): "We have had frequent occasion to consider questions of state taxation in the light of the federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over state taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods."
>
> That a state may tax callings and occupations as well as persons and property has long been recognized.
>
> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. . . . It [taxation] may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."
>
> And we beem [sic] it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders.

<u>Id.</u> at 51-52. (Citations omitted.) *See also*, <u>People of State of New York, ex rel. Cohn v. Graves</u>, 300 U.S. 308, 312-13 (1937) discussed above.

5. <u>The Petitioner has Misinterpreted the Buck Act. He is a Resident of Idaho</u>.

The Petitioner claims he is not subject to tax because he does not reside in the state of Idaho. The Petitioner relies on the Buck Act in support of his claim. The Buck Act, 54 Stat. 1059 (76th Congress 1940) (currently found at 4 U.S.C. § 105-110), establishes, inter alia, that no person shall be relieved from state income taxation on the grounds that the person receiving the income resides within a "federal area" or that the income was derived from property or transaction located or occurring in such area. 4 U.S.C.A. § 106 (West 1985). The Act defines the term "State" to include "any Territory or possession of the United States." 4 U.S.C.A. §110(d) (West 1985). The Petitioner states that since he is not residing in a territory or possession of the United States that he is relieved from state taxation. This interpretation is absurd on its face and without merit.

As discussed above, Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his taxable income. The term “resident” is defined in Idaho Code § 63-3013 as any individual who has resided in this state for the entire taxable year or who is domiciled in the state of Idaho. The Petitioner, who resided in [Redacted], Idaho, during the years in question, has presented no evidence supporting the claim that he is not a resident of Idaho.

6. <u>State Taxation is Based on Constitutional and Statutory Authority. It is Not Based on a Contractual Agreement</u>.

The Petitioner states he has not consented to the jurisdiction of Idaho or the federal government because he has not contracted with the state of Idaho or the United States. The Petitioner refers to a contract between himself and the state of Idaho that obligated him to the Tax Commission. Obviously, there is not one single written contract between the Petitioner and the state of Idaho regarding his tax obligations. However, by virtue of the Petitioner living within the boundaries of Idaho, he is obligated to follow the laws, including the tax laws, established by the state legislature.

The Petitioner also questions whether he was involved in a “revenue taxable activity.” In all years at issue, the Petitioner has been employed as a stockbroker in Idaho. This activity produced income that was taxable to the Petitioner. That income or compensation is included in the definition of gross income found in section 61 of the Internal Revenue Code. Since gross income is the starting point in determining taxable income, one would presume the Petitioner's occupation is a “revenue taxable activity.”

7. Voluntary Filing and Payment.

The courts have rejected the argument that the obligation to file returns and pay income tax is completely voluntary. While both the federal and Idaho tax laws are based on honest and forthright self-reporting, this does not support the argument that these laws are optional. Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988); United States v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985).

8. The Petitioner's Argument Regarding Self-Incrimination is Overly Broad and Not Supported by the Facts.

It is true that the Fifth Amendment of the United States Constitution protects an individual from compelled self-incrimination. However, it is well settled that blanket claims of Fifth Amendment immunity are insufficient to avoid the legal requirement to file an income tax return. Garner v. United States, 424 U.S. 648, 651 (1976); California v. Byers, 402 U.S. 424, 430 (1971); United States v. Campbell, 619 F.2d 765, 769 (8th Cir. 1980); United States v. Stout, 601 F.2d 325, 332 (7th Cir. 1979); United States v. Edelson, 604 F.2d 232, 235 (3d Cir. 1979); United States v. Johnson, 577 F.2d 1304, 1311 (5th Cir. 1978); Idaho State Tax Commission v. Peterson, 107 Idaho 260, 262 (1984). Absent some factual basis to show that the Petitioner is faced with a real and substantial danger of self-incrimination, he remains legally obligated to fill out and file his Idaho return. See, e.g., Marchetti v. United States, 390 U.S. 39, 53 (1968). ("The central standard for the privilege's application has been whether the claimant is confronted by substantial and 'real,' and not merely trifling or imaginary, hazards of incrimination.")

9. The United States Supreme Court has rejected the Petitioner's Argument Concerning the Income Tax as an Unapportioned Direct Tax.

Additionally, the courts addressed and rejected the argument that the individual income tax is an unconstitutional excise tax. In Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916), the

United States Supreme Court ruled the federal income tax of 1913 was constitutionally valid even though it imposed an unapportioned direct tax. The Court held the ratification of the Sixteenth Amendment removed the constitutional barrier against unapportioned direct taxes. In the case of Diefendorf v. Gallet, 51 Idaho 619 (1932), the Idaho Supreme Court found the Idaho income tax, which is an excise tax and not a property tax, is constitutional.

10. The Tax Commission has not only the Authority, but also the Duty, to Examine Returns, Determine Correct Amount of Tax and Issue Notice of Deficiency Determination.

In the event a person fails to file a proper tax return or to pay the proper amount of individual income tax, Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency Determination.

> **63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.** (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery . . .

The Idaho income tax filing requirements are set out in the Idaho statute. Idaho Code § 63-3030 provides that every resident who has gross income, as defined by Section 61(a) of the Internal Revenue Code, exceeding a specified dollar amount is required to file an Idaho individual income tax return. Persons who are required to file an Idaho individual income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024.

The record before the Tax Commission demonstrates that the Petitioner was domiciled in Idaho. The Petitioner does not dispute he lived in Idaho during the tax years in question. His [Redacted], Idaho domicile also means the Petitioner is a resident of Idaho for Idaho income tax purposes. Based on the information available to the Tax Commission, the Petitioner received income in excess of the statutory threshold amounts and therefore was required to file income tax returns.

CONCLUSION

The specialist correctly determined the Petitioner's income was subject to Idaho individual income tax, prepared provisional returns and issued a Notice of Deficiency Determination. It is well settled in Idaho that provisional returns determined by the Idaho State Tax Commission are presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986).

The burden is on the Petitioner to show that the tax deficiency is erroneous. Id. The Petitioner has failed to show that the provisional returns prepared by the Tax Commission were incorrect. Accordingly, the Tax Commission finds the provisional returns to be a fair representation of the Petitioner's taxable income for the taxable years in question and that the amounts shown due on the Notice of Deficiency Determination are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated December 15, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following tax, penalty, and interest.

YEAR	TAX	PENALTY	INTEREST	TOTAL
1997	$1,645	$411	$825	$ 2,881
1998	$1,633	$408	$693	$ 2,734
1999	$1,624	$406	$571	$ 2,601
2000	$1,584	$396	$430	$ 2,410
2001	$1,482	$371	$288	$ 2,141
2002	$1,455	$364	$189	$ 2,008
			TOTAL AMOUNT DUE	$14,775

Interest is calculated through July 29, 2005.

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

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision. As set forth in the enclosed explanation, you must deposit with the Tax Commission twenty percent (20%) of the total amount due in order to appeal this decision. The twenty percent deposit in this case is $2,955 and will be held as security for the payment of taxes until the appeal is finally resolved.

DATED this ____ day of ___________________, 2005.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _______________, 2005, 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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