

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NOS. 21551 & 21552
[Redacted])	
Petitioner.)	DECISION
)	
)	
)	

FACTUAL AND PROCEDURAL BACKGROUND

This is an individual income tax case. Based upon [Redacted] income tax information, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued two Notices of Deficiency Determination (NODs) to [Redacted] (Petitioner). Both NODs were dated September 4, 2008. One NOD covers taxable years 1996 through 1998 and references docket number 21551. The other NOD covers taxable years 1999 through 2004 and references docket number 21552. The federal information underlying the NODs in these matters was obtained from an IRS audit resulting in a final federal determination. The NODs advised the Petitioner that if he disagreed with the determination by the Bureau, he could petition the Commission for a redetermination of the NOD.¹

In response, the Petitioner protested the NODs. The Petitioner claimed at this time to have previously paid the 1999 through 2004 liabilities. The Petitioner also claimed the following for all the years in question: “There is no “Final Determination” or “Assessment” of, or liability for, any [Redacted] Tax for the years detailed in the “Notice of Deficiency” and therefore there is no State Tax due or owing for those same years.”

¹ The reader of this decision may wonder why two separate NODs were issued. Two separate NODs were issued because the Petitioner had never filed Idaho individual income tax returns for taxable years 1996 through 1998, however, for taxable years 1999 through 2004, a different set of circumstances had occurred. Petitioner filed actual returns and paid any taxes owed per those returns for taxable years 1999 through 2004. Federal information received by the Bureau showed Petitioner owed additional amounts for 1999 through 2004 and the NOD in docket number 21552 was issued to assert those deficiencies.

The Bureau mailed Petitioner a letter dated November 12, 2008, acknowledging that a protest had been received and that the matter was being transferred to the legal department of the Commission. The legal department sent a letter to the Petitioner dated December 17, 2008, acknowledging that a proper protest had been filed and requesting that the Petitioner indicate whether he wanted an informal hearing.

The Petitioner sent a letter dated January 15, 2009, requesting a hearing and that the hearing be delayed until thirty days after adjournment of the legislative session.² The Commission sent a letter dated February 5, 2009, allowing the hearing to be delayed no later than May 15, 2009. The Petitioner sent a letter to the Commission dated April 29, 2009, requesting again that the hearing be delayed and that within thirty days of the end of the legislative session he would contact the Commission and schedule a hearing. The Commission sent a letter dated May 6, 2009, wherein the Commission again agreed to delay the hearing, but that the hearing would be held within two weeks of the end of the legislative session. The legislative session ended May 8, 2009. The two week time period elapsed without the Petitioner contacting the Commission, however, Petitioner later sent a letter dated June 6, 2009, asking that the hearing be delayed again and providing a range of dates for a hearing between June 23 and July 10, 2009. The Commission again granted a delay to the hearing, which was scheduled and held on July 8, 2009. The Commission received further documentation from the Petitioner on July 7, 2009, as well as at the hearing, in support of his protest. During the hearing, the Petitioner agreed to provide the Commission with information regarding his appeals with the Internal Revenue Service by July 24, 2009.

The Commission sent a letter dated July 9, 2009, to the Petitioner reminding him of his agreement to supply the [Redacted] appeal information by July 24, 2009. The Commission received a request from the Petitioner on July 13, 2009, in which the Petitioner requested copies of

² [Redacted]

“all documents that you used to arrive at both of the “Notice of Deficiency Determination”(s) dated September 4, 2008.” The Commission copied those documents and provided them to the Petitioner in a letter dated July 21, 2009. The Commission received a phone call and fax on July 24, 2009, from a law firm in Spokane, Washington, in which a law firm paralegal indicated that one of its lawyers would be sending the Commission a letter in the following week regarding the Petitioner’s tax matters. The law firm never sent the Commission any other correspondence, however, Petitioner provided the Commission with a letter that a Spokane, Washington law firm sent to Petitioner. This letter accompanied additional materials the Petitioner provided to the Commission on September 10, 2009, in support of his protest. The Commission has not received any further communications from the Petitioner or anyone else claiming to represent him. The Commission also has not as of the date of this decision received the [Redacted] appeal information the Petitioner indicated he would provide. The Commission now issues this decision based upon the material currently in the file.

PROTESTED ISSUES AND ANALYSIS

Petitioner provides five arguments to support his protest. The first is an argument regarding serving civil process on a legislator. The second argument is the old and tired unapportioned direct tax argument. The third argument is in regard to whether Idaho may proceed with this matter when, according to the Petitioner, no assessment exists at the federal tax level. The fourth argument is that the Petitioner believes the income information provided to the Commission by the federal government is incorrect. The fifth, and last argument, is that the Idaho income tax does not conform to the uniformity requirements of Article VII, Section 5 of the Idaho Constitution. These arguments are addressed below.

Serving of Civil Process and [Redacted] Assessment

Petitioner alleges that the [Redacted] issued a deficiency notice to him and demanded a response during the time he was serving in the [Redacted]. Petitioner claims that he should be free from civil process during the time he is serving in the legislature according to Idaho Constitution, Article III, Section 7, which reads in pertinent part: “Senators and representatives in all cases . . . shall not be liable to any civil process during the session of the legislature, nor during the ten days next before the commencement thereof . . .”

Petitioner believes these circumstances should somehow bar Idaho from proceeding on its NODs in these matters. The Bureau’s NODs are at issue in this matter. What the [Redacted] has done regarding the referenced constitutional timeframes in its enforcement of [Redacted] taxes is not at issue in this matter. Even assuming that Idaho Constitution, Article III, Section 7, may apply to administrative proceedings, the Commission has not required the Petitioner to engage in any process during the applicable constitutional timeframes and has in fact given substantial deference to Petitioner’s legislative schedule.³

Petitioner also believes that because the [Redacted] has not provided him a copy of his “assessment,” that this should also bar Idaho from proceeding on its NODs in these matters.

Again, the Bureau’s NODs are at issue in this matter. As stated above, the manner in which the [Redacted] addresses its tax matters with Petitioner, insofar as these arguments are concerned, is irrelevant to a discussion regarding whether the Bureau’s NODs are upheld.

Unapportioned Direct Tax

³ The letter referenced above from the Spokane, Washington attorney addresses the legislative immunity issue. Even assuming that the IRS’s actions that Petitioner claims took place during times when he should have had Idaho legislative immunity and that those actions were in regards to tax information upon which the Tax Commission based its NODs, the Tax Commission does not find the letter persuasive. The attorney is unable to cite any legal precedent that specifically addresses the application of Article III, Section 7, of the Idaho Constitution to [REDACTED] proceedings or Idaho tax administrative proceedings. The Petitioner also argues that Idaho’s NODs are invalid because of the “fruit of the poisonous tree.” The Commission assumes that Petitioner is making reference to law limiting the introduction of evidence if it is obtained illegally in criminal proceedings. The Commission does not find that the fruit of the poisonous tree doctrine has application in these civil administrative proceedings.

Petitioner argues that the Bureau's NODs are based upon a [Redacted] tax and, therefore, do not conform to the taxation authority granted by the United States Constitution because it is an unapportioned direct tax.

State [Redacted] courts have rejected this type of theme time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (C.A. 7 (Ind.) 1986), 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 similar arguments as 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.

Idaho Code § 63-3002 provides what is taxable income as follows:

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 petitioner 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.

As incorporated into the Income Tax Act by Idaho Code § 63-3002, individuals are subject to Idaho income tax on their 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.

Petitioner has income and is required to file and pay taxes for the taxable years 1996 through 2004. 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, 50 (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 transaction within their borders; 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.

Justice Pitney went on to write:

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.

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 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.

In Michigan Central Railroad v. Powers, 201 U.S. 245, 292, 293, the court, by Mr. Justice Brewer, said: "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."

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

Federal Information

Here, the Petitioner argues that the information the Bureau obtained regarding his income from the federal government was incorrect. He argues that the [Redacted] incorrectly calculated his income and that the Commission should not rely on this information.

However, Petitioner has failed to present any supporting records to support his assertions. Petitioner's argument, in this regard, will not receive further review from the Commission. The Commission does not infer that, even if it were to receive supporting documentation from

Petitioner, that the Commission would modify its NODs. The Petitioner carries the burden to prove that the Commission's NODs are incorrect.

Article VII, Section 5

Lastly, the Petitioner believes that because the Idaho income tax is a graduated tax it fails the uniformity requirement of Article VII, Section 5 of the Idaho Constitution. The Petitioner weaves this argument using broken thread. The legislature in Idaho Code § 63-3002 states the intent to make “insofar as possible . . . the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue code . . . subject only to modifications contained in the Idaho law;” (emphasis added). The Petitioner fails to understand that the fabric of the Idaho income tax is Idaho law and not the Internal Revenue Code.⁴ The Internal Revenue Code may be used to provide guidance, but the Idaho income tax is woven by Idaho law using Idaho statutory thread. The Petitioner misreads Idaho Code § 63-3002. Idaho Code § 63-3002 only includes intent language. The Idaho income tax requirements are as set out in Idaho Code § 63-3022, and other applicable provisions of Idaho law. The final sentence in Idaho Code § 63-3002 also clearly states that, “All of the foregoing is subject to modifications in Idaho law . . .” In addition, the Idaho legislature specifically provided in Idaho Code § 63-3080 that the Idaho income tax is not a property tax. Therefore, as ruled by the Idaho Supreme Court in Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307, (1932), the Idaho income tax act is not a property tax. The property tax uniformity provisions of Article VII, Section 5 of the Idaho Constitution that prohibit a graduated property tax are not applicable to the Idaho income tax.

CONCLUSION

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106

⁴ The Commission also finds that the case law Petitioner cites does not support his theory that the federal income tax is a property tax.

Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 fn.2 (Ct. App. 1986). The burden is on the Petitioner to show that the tax deficiency is erroneous. Id. Since the Petitioner has failed to meet this burden, the Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

The Bureau also added interest, which interest will continue to accrue pending payment of the tax liability pursuant to Idaho Code § 63-3045(6), and penalty to the Petitioner's tax deficiency. The Commission finds those additions appropriate as provided for in Idaho Code §§ 63-3045 and 63-3046.

WHEREFORE, the Notices of Deficiency Determination dated September 4, 2008, are hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	\$2,879	\$ 720	\$2,460	\$ 6,059
1997	8,387	2,097	6,429	16,913
1998	2,736	684	1,887	5,307
1999	2,281	570	1,406	4,257
2000	2,928	732	1,572	5,232
2001	3,680	920	1,692	6,292
2002	2,133	533	843	3,509
2003	1,683	421	576	2,680
2004	2,286	343	645	<u>3,274</u>
			TOTAL	<u>\$53,523</u>

Interest is calculated through October 15, 2009.

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

An explanation of the Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.