

**BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO**

IN THE MATTER OF THE PROTEST OF
ANTHONY CORDOVA
PROTEST TO DENIAL OF CLAIM FOR REFUND

NO. 97-27

DECISION AND ORDER

This matter came on for formal hearing before Gerald B. Richardson, Hearing Officer, on June 6, 1997. Anthony Cordova, hereinafter, Mr. Cordova or "Taxpayer", represented himself at the hearing. The Taxation and Revenue Department, hereinafter, "Department", was represented by Frank D. Katz, Chief Counsel. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer was born in Albuquerque, New Mexico on January 6, 1967 and continues to reside there.
2. The Taxpayer was employed by Intel Corporation during calendar year 1995 and continues to be employed by Intel Corporation at the present time. The Taxpayer's job duties involve maintaining the software, hardware and network drives that run the robotics which perform the silicon wafer manufacturing operations at Intel Corporation.
3. In 1995, the Taxpayer was paid \$42,144.24 in wages by Intel Corporation.
4. In 1995, Intel Corporation withheld \$1,944.64 in New Mexico income tax withholding taxes from the wages paid the Taxpayer.
5. For tax year 1995, the Taxpayer filed a personal income tax return with the Internal Revenue Service which reported \$3,477 on line 1, which calls for the total wages, salaries and tips to be reported by taxpayers. This amount was income the Taxpayer received from the sale of some Intel Corporation stock. The Taxpayer also reported \$26 in interest income, for a total of \$3,503 in

"adjusted gross income" as shown on the Taxpayer's 1995 Federal income tax return.

6. For tax year 1995, the Taxpayer filed a New Mexico personal income tax return showing \$3,503 of Federal adjusted gross income. The Taxpayer's return requested a refund in the amount of \$1,945.

7. The Taxpayer's 1995 state and federal tax returns were prepared by Steven C. Massoth, who is a member of the law study group of which the Taxpayer is a member.

8. On June 13, 1996, the Department denied the Taxpayer's claim for refund of \$1,945.

9. On July 10, 1996, the Taxpayer filed a written protest to the Department's denial of his claim for refund.

10. The Taxpayer is part of a law study group which meets every Thursday night at the Law Library of the University of New Mexico Law School to study tax law.

DISCUSSION

The sole issue to be determined herein is whether the Department erroneously denied the Taxpayer a refund of the income taxes withheld from his wages from employment in New Mexico.

The Taxpayer is part of a "law study group" which, apparently, does not believe that its members are subject to income taxation by state or federal governments. The Taxpayer claimed not to understand how the figures reported on his New Mexico and federal income tax return were arrived at because the returns were prepared by another member of his law study group. The Taxpayer did admit, however, that Intel Corporation, his employer, paid him \$42,144.24 in 1995, as reflected on his W-2 wage and tax statement. The Taxpayer also acknowledged that this amount was not what was reported on his 1995 New Mexico personal income tax return. New Mexico imposes its income tax upon the net income of "every resident individual". New Mexico is among the majority of states which "piggy-back" or use the federal income tax system as the basis for calculating state income taxes. The calculation of personal income taxes in New Mexico begins with a determination of "base income" which is defined to be the taxpayer's "adjusted gross

income" as defined in Section 62 of the Internal Revenue Code, plus certain net operating loss deductions which can be deducted for federal purposes in arriving at federal adjusted gross income but which New Mexico does not allow to be deducted in the same manner. *See*, NMSA 1978, § 7-2-2(B). New Mexico then allows certain deductions, such as the federal standard or itemized deductions and deductions for income from federal obligations, to arrive at "net income" upon which income tax is imposed. *See*, NMSA 1978, §§ 7-2-2(N) and 7-2-3. Because Mr. Cordova's arguments are, in essence, directed at the legality of the federal income tax, and provisions of the Internal Revenue Code, which provide the basis for calculating New Mexico's income tax, the Internal Revenue Code, and the federal authority interpreting it and the United States Constitution will be consulted to determine Mr. Cordova's protest.

The Internal Revenue Code, hereinafter, "Code", defines adjusted gross income to be gross income, less certain deductions which are listed in Section 62 of the Code. Gross income is defined in Section 61 of the Code as follows:

Except as otherwise provided in this subtitle, gross income means

all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowments contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

26 U.S.C. § 61 (1997). This definition is quite broad and inclusive, and is certainly broad enough

to include under the first listed category of compensation for services the wages or salary paid by Intel Corporation to Mr. Cordova.

Mr. Cordova and the other members of the "law study group" in which he participates are part of a growing group of people who may be classified as tax resisters or tax protestors. Mr. Cordova did not really articulate the basis for why he believes that his income from wages paid to him by Intel Corporation is not subject to income tax, but he provided some citations to authority in support of his position. These will be addressed later in this decision.

From the outset, I would note that there is ample federal authority upholding the constitutionality of the federal income tax, and upholding the imposition of federal income tax on wages, specifically. I am thus led to the conclusion that Mr. Cordova's law study group was either extremely selective in its reading of the law on point, or it was extremely sloppy in conducting its research. I would refer Mr. Cordova to one case in particular, which addresses the standard tax resister arguments and cites to numerous federal cases upholding federal income taxes in the face of these arguments. In *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68, the Seventh Circuit Court of Appeals addressed the consolidated cases of Mr. Norman Coleman and Mr. Gary Holder. Both of these individuals had argued that their wages were not subject to federal income taxation. The court had this to say about those arguments:

Coleman says that wages may not be taxed because they come from his person, a depreciating asset. The personal depreciation offsets the wage, leaving no net income. Coleman thinks that only net income may be taxed under the Sixteenth Amendment--net income as Coleman defines it, not as Congress does. Holder, who styles himself a "private citizen," insists that wages may not be taxed because the Sixteenth Amendment authorizes only excise taxes, and in Holder's world excises may be imposed only on "government granted privileges." Because Holder believes that he is exercising no special privileges, he thinks he may not be taxed. ***These are tired arguments. The code imposes a tax on all income. See, 26 U.S.C. § 61. Wages are income, and the tax on wages is constitutional. See, among hundreds of other cases, United States v. Thomas***, 788 F.2d 1250, 1253 (7th Cir. 1986); *Lovell v. United States*, 755 F.2d 517 (7th Cir. 1984); *Granzow v. CIR*, 739 F.2d 265, 267 (7th Cir. 1984); *United States v. Koliboski*, 732 F.2d 1328, 1329 & n. 1 (7th Cir. 1984). See also *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 12, 24-15, 36 S.Ct. 236, 239, 244-45, 60 L.Ed. 2d 493 (1916).

Id. at 70. As this case and the cases cited therein indicate, there is really no question that Mr. Cordova's income from wages paid by Intel Corporation are income for federal tax purposes, and as such, would be included in federal adjusted gross income for federal purposes, and by inference, for purposes of calculating New Mexico personal income taxes.

Because Mr. Cordova provided citations and quotations from various federal and state cases, those authorities will now be addressed.

First, the case of *Jack Cole Company v. MacFarland*, 337 S.W.2d 453 (Tenn. 1960) was cited for the proposition that the right to receive income or earnings is a right belonging to every person, and the realization and receipt of income is therefore not a "privilege" which may be taxed. A review of this case reveals that the Tennessee Supreme Court based this conclusion on some rather unique language found in the Tennessee Constitution which had granted the legislature the power to tax the income from stocks and bonds. The Tennessee Supreme Court in *Evans v. McCabe*, 52 S.W.2d 159 (1932) had construed this language narrowly as only granting the legislature the right to tax income from stocks and bonds, thus implicitly restricting the legislature's right to tax income from any other source other than stocks and bonds. The language relied upon is not found in either the United States Constitution or the Constitution of the state of New Mexico.

Thus, while it may be the law of Tennessee that the right to receive income is a privilege which cannot be taxed, that is not the law of either the United States or New Mexico. In fact, it has long been established in federal law that an income tax may be imposed upon privileges, such as the privilege of conducting business. See, *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 55 L.Ed. 389 (1911).

The Taxpayer also cited to *Redfield v. Fisher*, 292 P. 813 (Or. 1930), a 1930 Oregon Supreme Court decision which had struck down an Oregon tax on intangible property owned by individuals. The court struck down the tax as violative of the provision of the Oregon Constitution which requires taxation to be uniform on the same class of subjects. Because the same intangible property would not have been taxed when owned by corporations, the court ruled the tax

unconstitutional. The Taxpayer cited to dicta in the court's opinion which stated that an individual, unlike a corporation, cannot be taxed for the mere privileges of existing and owning property, which are natural rights. This "natural rights" theory apparently derives from a line of thought embraced by the tax protester movement by which they claim that they are not citizens of the United States, but are "freeborn, natural individuals", and as such are the master or sovereign, and are not a servant to the government. This theory has been soundly rejected by the federal courts which have upheld the imposition of the federal income tax. As stated in *Lovell, v. U.S.*, 755 F.2d 517 (7th Cir., 1984):
All individuals, natural or unnatural, must pay federal income tax on their wages, regardless of whether they received any "privileges" from the government.

Id. at 519. See, also, *U.S. v. Sloan*, 939 F. 2d 499, 500-501 (7th Cir. 1991).

The Taxpayer also provided quotations from several old state and federal cases which distinguished between profit and wages or wages and income. None of these cases involved the interpretation or constitutionality of the Internal Revenue Code as it exists today. Given the clear holdings of more recent federal cases, such as the *Coleman* case, quoted above, these authorities are simply not persuasive.

Mr. Cordova impressed me as being both intelligent and sincere in pursuing his protest. I urge him to pursue his study of the law of taxation and to read, not just the cases which espouse outdated or superseded views of the law of taxation, but the more recent cases which are directly applicable to the arguments being propounded by the tax protester movement. Can Mr. Cordova really believe that his wages are not subject to income taxation when the law is to the contrary and literally millions of other United States citizens report and pay such income taxes on their earnings and wages every year?

I would leave Mr. Cordova with the following admonition:
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.* (emphasis added).

The federal caselaw contains hundreds of cases where tax protesters have been sent to prison for tax evasion or fined substantially for filing frivolous returns based upon the theories espoused by the tax protestor movement. New Mexico also makes it a felony to file false returns or to evade taxes, *see*, NMSA 1978, §§ 7-1-72 and 7-1-73, and it imposes a 50% of tax civil penalty for the fraudulent failure to pay any tax required to be paid. NMSA 1978 § 7-1-69(B). Mr. Cordova may be faced with such consequences if he should continue to file returns in the same manner as he filed his 1995 state and federal returns. This is especially so now that he has been informed of the law. He has the opportunity to rectify his error by filing amended returns with both New Mexico and the Internal Revenue Service. I would urge him to act on this opportunity.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest, pursuant to NMSA 1978 § 7-1-24 to the Department's denial of his claim for refund and jurisdiction lies over both the parties and the subject matter of this protest.

2. The Taxpayer's wages from Intel Corporation are included in both "gross income" and "adjusted gross income" as those terms are defined in the Internal Revenue Code.

3. The Taxpayer's wages from Intel Corporation are included in both "base income" and "net income" as those terms are defined in the Income Tax Act, Chapter 7, Article 2, NMSA 1978.

4. The Taxpayer is not entitled to a refund of the taxes withheld from his wages earned from Intel Corporation in 1995 because those wages were properly subject to the imposition of New Mexico's income tax.

For the foregoing reasons, the Taxpayer's protest IS HEREBY DENIED.

DONE, this 16th day of July, 1997.