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

IN THE MATTER OF THE PROTEST OF
DOUGLAS AND BRENDA RATLIFF **NO. 98-08**
PROTEST TO DENIAL OF CLAIM FOR REFUND

DECISION AND ORDER

This matter came on for formal hearing on January 12, 1998 before Gerald B. Richardson, Hearing Officer. Douglas and Brenda Ratliff, hereinafter, "the Ratliffs", were represented by Brenda Ratliff. The Taxation and Revenue Department, hereinafter, "the Department", was represented by Frank D. Katz, Chief Counsel. At the close of the hearing, the Ratliffs were given an additional two weeks time to submit additional argument, which was received on January 26, 1998 and the matter was considered submitted for decision at that time. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Ratliffs are residents of New Mexico and were so during tax years 1992, 1993 and 1994.

2. On April 15, 1996, the Ratliffs filed amended New Mexico personal income tax returns for the 1992 and 1994 tax years, and concurrently filed amended federal personal income tax returns for those same years. The Ratliffs had previously reported $37,581 in federal adjusted gross income for the 1992 tax year and $41,181 in

federal adjusted gross income for the 1994 tax year on both their New Mexico and Federal returns. The amended returns adjusted the amount reported as federal adjusted gross income for both their New Mexico and federal returns to zero for both tax years.

3. As a result of amending their federal adjusted gross income on their 1992 and 1994 New Mexico personal income tax returns, the Ratliffs requested a refund in the amount of $1,054 for the 1992 tax year and $1,165 for the 1994 tax year.

4. The Department denied the Ratliffs' claims for refund for the 1992 and 1994 tax years.

5. The Ratliffs filed timely, written protests to the Department's denials of their claims for refund for the 1992 and 1994 tax years.

6. During tax year 1992, Mr. Ratliff was paid $24,300 in wages by his employer, Hope Enterprises Field Service. During that same year, Mrs. Ratliff was paid $415.88 in wages by Owens Backhoe and $13,956.14 in wages by Hope Enterprises Field Service.

7. During tax year 1994, Mr. Ratliff was paid $27,000 in wages by Hope Enterprises Field Service. During that same year, Mrs. Ratliff was paid $1,404 in wages by Hope enterprises Field Service and $160 in wages by Eddy County.

8. On January 15, 1997, the Ratliffs filed an amended New Mexico personal income tax return for tax year 1993, which amended their previously reported federal adjusted gross income to zero and requested a refund in the amount of $889.

9. On January 30, 1997, the Department issued a refund check to the Ratliffs for the 1993 tax year in the amount of $889.

10. On May 27, 1997, the Department issued Assessment No. 704493 to the Ratliffs, assessing $889 in personal income tax for tax year 1993, plus penalty and interest.

11. There has been no protest to Assessment No. 704493 by the Ratliffs.

DISCUSSION

The issue to be determined herein is whether the Department properly denied the Ratliffs' claims for refund[1]. The underlying legal issue upon which the foregoing determination depends is whether the compensation the Ratliffs received from their employment in New Mexico during the tax years in issue is subject to income taxation by the State of New Mexico. The Ratliffs have raised a number of legal arguments as to why their wages are not subject to income taxation which will be addressed individually. Prior to such discussion, however, New Mexico's personal income tax system will be explained.

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

[1] At the hearing it was agreed that the parties would also investigate the status of the Department's assessment for the 1993 tax year, because the same legal issues are involved in determining whether the Department's assessment was proper. Because the Ratliffs never filed a protest to the Department's assessment, and because the time for filing such a protest has expired, there is no jurisdiction in this forum to address the propriety of the assessment for the 1993 taxes.

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 the Ratliffs' 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 their protest.

The first argument made by the Ratliffs is that the right to labor or the right to earn a living is a fundamental right which cannot be taxed. The Ratliffs cited to a number of old federal decisions which discussed rights considered essential to the orderly pursuit of happiness which generally included concepts such as the right to labor or to pursue one's occupation. The problem with the Ratliffs' argument is that even if the right to labor is a fundamental right, none of the authorities cited prohibit the government from imposing an income tax on the income earned from the exercise of such a right. The authorities do not even begin to support this proposition. For instance, the Ratliffs cite to Section 128 of the Internal Revenue Code, 26 U.S.C.§ 128 for the proposition that "gross income earned in the exercise of an unalienable right is exempted by fundamental law and is free from tax". An examination of the section cited, however, reveals that this section provided that "gross income does not include any amount received by any individual during the taxable year as interest on a depository institution tax exempt savings certificate". Not only does this provision state nothing resembling that for which it was cited, this section was repealed by

act of Congress on November 5, 1990, 104 Stat. 1388-520. The Ratliffs also cited to the U.S. Supreme Court decision in ***Yakus v. U.S.***, 321 U.S. 414, 468 (1944) for the same proposition that the government may not tax the exercise of a fundamental or inalienable right. A reading of this case, and the page cited, however, reveals that the case was about the separation of powers between the federal courts and Congress, and contains no statement to the effect for which it was cited. In addition to failing to cite to authority which accurately supports their argument on this point, the Ratliffs' argument fails to recognize the difference between a law which taxes the results of one's labor and a law which would prohibit the exercise of the right altogether. While the latter might be prohibited, there is ample authority, which will be cited below, upholding the power of Congress to enact laws which impose an income tax on wages, such as those earned by the Ratliffs.

The next argument raised by the Ratliffs has to do with the Sixteenth Amendment to the United States Constitution. The Department argued that the Sixteenth Amendment authorized Congress to impose income taxes, and a reading of it supports this conclusion, because it provides:

> The Congress shall have the power *to lay and collect taxes on incomes, from whatever source derived,* without apportionment among the several States, and without regard to any census or enumeration. (emphasis added).

The Ratliffs argue that it is incumbent upon the Department to prove that the Sixteenth Amendment was ratified and is in force. This argument misapplies the burden of proof in this proceeding. It is the Ratliffs who bear the burden of proving their entitlement to the refund they have requested, and thus, if they believe that the Sixteenth Amendment was not properly ratified, it was incumbent upon them to prove it. In spite of this failure, I

have researched this matter and the Sixteenth Amendment was certified by the Secretary of State on February 25, 1913 as having been ratified by the legislatures of forty states. Article V of the United States Constitution requires ratification by three quarters of the states for any amendment to the Constitution. Because at the time, there were forty-eight states, the approval of thirty-six states was required for ratification. Thus, there is no merit to the Ratliffs' argument that the amendment was not ratified.

The Ratliffs also argue that New Mexico's income tax violates Article VIII, Section 1 of the New Mexico Constitution because they believe that a graduated income tax, such as New Mexico's, violates the requirement of equal and uniform taxation found in that constitutional provision. Article VIII, Section 1 provides as follows:

> Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class. Different methods may be provided by law to determine value of different kinds of property, but the percentage of value against which tax rates are assessed shall not exceed thirty-three and one-third percent.

As a reading of the full language of the provision makes clear, the requirement of equal and uniform taxation applies to "subjects of taxation of the same class". This allows the legislature to set up different classes which can be taxed differently. Thus, it can determine that those subjects of taxation who earn higher incomes to be a different class than those who earn less, and those groups can be taxed differently, or at different rates. Additionally, the New Mexico Supreme Court construed this section of the Constitution to apply only to property taxes. ***Sunset Package Store, Inc. v. City of Carlsbad,*** 79 N.M. 260, 442 P.2d 572 (1968). Because the income tax is not a tax on property, New Mexico's graduated income tax could not violate this provision.

As noted above, New Mexico uses federal adjusted gross income as its starting point for calculating New Mexico personal income taxes. The Internal Revenue 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 salaries earned by Mr. and Mrs. Ratliff from their employment in New Mexico during the relevant tax years.

The Ratliffs' protest, arguments and other written materials submitted in support of their claim that their earnings are not subject to taxation are rife with examples of citations which do not establish the proposition or arguments they are cited for. I have seen these authorities and quotations before, as they are propounded by a movement called the tax protester or tax resister movement. The arguments propounded are often

elaborately structured and rely upon quotations either misconstrued, taken out of context, or from cases which are no longer current law, such as cases decided prior to the adoption of the Sixteenth Amendment. Clearly, someone has taken great pains to construct such arguments and to research archaic law. Yet, my review of the law challenging the Federal Income Tax reveals numerous cases which directly address the many arguments propounded by the tax resister movement and reject them soundly. I am left to conclude that the Ratliffs and the other members of the movement have not really thoroughly researched the law which they so ardently state to support their view that they are not subject to taxation. Instead, these individuals appear to be motivated solely by self interest in their desire to avoid paying taxes which support the very governmental system which they claim to believe in.

Just in case the Ratliffs have truly made an effort to fully understand the law in this area and have simply failed to find authority opposing their views, I would direct them 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, and I would urge them to read it and the other cases cited therein. 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 the Ratliffs' income from wages is 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.

I would leave Mr. and Mrs. Ratliff with the following admonition from the court decision in the ***Coleman*** case, ***supra***:

> 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).

Id. at 69. 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 protester 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. and Mrs. Ratliff may be faced with such consequences if they should continue to file returns in the same manner as they filed their 1992, 1993 and 1994 state and federal returns. This is especially so now that they have been informed of the law. They have the opportunity to rectify their error by filing amended returns with both New Mexico and the Internal Revenue Service. I would urge them to act on this opportunity.

CONCLUSIONS OF LAW

1. The Ratliffs filed timely, written protests to the Department's denial of their claims for refund for the 1994 and 1992 tax years and jurisdiction lies over both the parties and the subject matter of this protest.

2. The Ratliffs' wages are included in both "gross income" and "adjusted gross income" as those terms are defined in the Internal Revenue Code.

3. The Ratliffs' wages 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 Ratliffs are not entitled to a refund of the taxes previously paid or withheld from their earnings in New Mexico during 1992 or 1994 because those earnings were properly subject to the imposition of New Mexico's income tax.

For the foregoing reasons, the Ratliffs' protest IS HEREBY DENIED.

DONE, this 12th day of February, 1998.