

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 12843
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On April 8, 1998, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (taxpayers), proposing income taxes, penalty and interest for the years 1991 through 1996 in the total amount of \$24,639.

On June 10, 1998, a timely protest and petition for redetermination was filed by the taxpayers' accountant, [Redacted] (Mr. [Redacted]). An informal hearing has not been requested by Mr. [Redacted]. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

[Redacted].

On November 17, 1997, the Tax Discovery Bureau sent a letter with a questionnaire to the taxpayers to help the Commission properly determine the taxpayers' filing requirement. The taxpayers did not respond to this letter.

The Commission issued a NOD on April 8, 1998 to the taxpayers [Redacted]. A joint filing status was designated for the taxpayers in the NOD. The taxpayers have not made the election to file a joint return because they had not filed their federal income tax returns for the years in question.

Mr. [Redacted], the taxpayers' accountant, sent in a protest letter on June 10, 1998, which stated in pertinent part:

We feel that the information gathered by the State to determine the [Redacted] tax liability for the tax years specified 1991 through 1996 is incorrect. We expect that the actual figures will show a loss for the

[Redacted] [sic], due to the poor cattle prices of the past years. We are in the process of gathering the necessary information necessary to prepare accurate returns. However, the [Redacted] [sic] are currently going through a divorce which has complicated and delayed the process of gathering the information in a timely manner, due to the numerous parties involved. We tentatively expect to have the information and returns prepared in approximately two months.

On December 23, 1998, the tax enforcement specialist indicated in the Protest Summary that the taxpayers have requested and have been granted several extensions of time to file their returns but have missed the deadlines for filing.

The tax enforcement specialist sent the case to the Legal/Tax Policy Division so that the taxpayers could further pursue their rights to appeal the NOD.

On January 13, 1999, a hearing rights letter was sent to Mr. [Redacted] to inform him of the taxpayers' alternatives for redetermining a protested deficiency determination. A follow-up letter was sent on March 30, 1999.

In a letter dated April 7, 1999, Mr. [Redacted] responded to the Commission's follow-up letter by promising to prepare returns and submit them after the necessary information was received from Mr. [Redacted]. Mr. [Redacted] did not provide the necessary information to Mr. [Redacted].

Mr. [Redacted] had intended to file joint returns for the taxpayers but has never received the necessary income information from the community property controlled by Mr. [Redacted].

[Redacted] has now filed her returns using a married filing separate filing status and only reported the income she earned. In this case, community property laws do not apply to community income because her ex-husband failed to notify her of the nature and amount of the income by the due date for the filing of the returns. The original NOD will be modified, by removing income earned by [Redacted].

Internal Revenue Code § 66(b) stated:

Secretary may disregard community property laws where spouse

not notified of community property.

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

The Commission received a Power of Attorney (POA) for Mr. [Redacted] by facsimile on October 20, 2000 that appointed [Redacted] to represent him as his new attorney-in-fact.

Idaho Code § 63-3002 stated in pertinent part:

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 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 . . .

Mr. [Redacted] has not provided the Commission with a contrary result to the determination of his income [Redacted]. Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated April 8, 1998, as MODIFIED, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer, [Redacted], pay the following taxes, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1991	\$4,113	\$1,028	\$3,243	\$8,384
1992	1,508	377	1,011	2,896
1993	1,839	460	1,036	3,335
1994	2,761	690	1,344	4,795
1995	3,292	823	1,316	5,431
1996	5,389	1,347	1,708	<u>8,444</u>
			TOTAL DUE	<u>\$33,285</u>

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.

DATED this ___ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, 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. [Redacted]

[REDACTED]

ADMINISTRATIVE ASSISTANT 1