

rejected and RevOp sent a notice to advise the taxpayer the refund shown in the amended Idaho return was being denied. The taxpayer objected and a Notice of Deficiency Determination was issued wherein the taxpayer was advised the refund was denied and his protest had been received. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3032 defines the due date of Idaho income tax returns:

63-3032. Time for filing income tax returns. (1) Except as provided in section 63-3033, Idaho Code:

(a) Returns made on the basis of the calendar year shall be filed in the office of the Idaho state tax commission on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed in the office of the Idaho state tax commission on or before the 15th day of the fourth month following the close of the fiscal year.

The fact that the taxpayer and his wife had an Idaho filing requirement is not disputed. Pursuant to Idaho Code § 63-3032, because the taxpayer's return was made on the basis of the calendar year, the due date for filing his 1999 income tax return with Idaho was April 15, 2000. The taxpayer did not submit either the original or the amended Idaho return until 2003. Clearly, long after the due date of April 15, 2000.

In the taxpayer's letter of protest dated July 17, 2003, the taxpayer states he received several requests for additional information starting with a letter from RevOp dated March 17, 2003. In reference to filing his 1999 Idaho return and amended Idaho return on time, the taxpayer stated: "As evidenced by this letter and attached correspondence I filed my 1999 Idaho tax return in a timely manner and have made every effort to accommodate your requirements."

Under Idaho law, earnings of a spouse are presumed to be community property. Idaho Code § 63-906(1); Martsch v. Martsch, 103 Idaho 142, 645 P.2d 882 (1982). An Idaho income tax return with a filing status of married filing separate must report and pay Idaho income taxes on 50% of the

combined wages of the married couple. Neither of the returns the taxpayer submitted accounted for his wife's Idaho wages.

Idaho Code § 63-3031 allows taxpayers to choose a filing status. Rule 805 states:

805. JOINT RETURNS (Rule 805).

Section 63-3031, Idaho Code. (3-20-97)

01. Effect Of Filing Status Used On Federal Returns. A taxpayer shall use the same filing status with Idaho as used when filing returns with the Internal Revenue Service. (3-20-97)

02. In General. (3-20-97)

a. A married couple may file a joint return. Section 63-3024, Idaho Code, provides for joint return tax rates for individuals filing joint returns and for an individual qualifying as a surviving spouse or head of household. (3-20-97)

b. **If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter.** For example, a married couple files a joint return before April 15 in the year due and desires to change their federal and state election to file separately. They may do so only if they file the separate returns on or before April 15. (3-20-97) (Emphasis added.)

The Tax Commission finds Idaho Code § 63-3032 and Rule 805 cited above, are controlling.

The clear statutory language sets a due date for filing an Idaho return and prohibits a couple from filing separate returns after the original return has been filed if the separate returns are not filed before the due date.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated July 29, 2003, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted] _____