

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17500
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On May 19, 2003, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted](petitioners), proposing income tax, penalty and interest for the years 2000 and 2001 in the total amount of \$6,432.

On July 11, 2003, a timely protest and petition for redetermination was received from [Redacted] (husband). An informal hearing has not been requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

On October 22, 2002, the Tax Discovery Bureau sent a letter with a questionnaire to the petitioners to help the Commission properly determine the petitioners' filing requirement. The petitioners did not respond.

The Commission issued a NOD to the petitioners on May 19, 2003, based on income information [Redacted]. A joint filing status was designated for the petitioners in the NOD. The petitioners had not filed their federal or state income tax returns for the years in question and, therefore, had not made the election to file joint returns.

On July 24, 2003, TDB's tax enforcement specialist (specialist) sent the petitioners a letter that acknowledged the petitioners' protest. The specialist requested that the petitioners send copies of their 2000 and 2001 Idaho individual income tax returns by August 22, 2003. Since no returns

were filed, the petitioners' case was sent to the Commission's Legal/Tax Policy Division for further review.

On December 15, 2003, the Tax Policy Specialist (policy specialist) sent a hearing rights letter to the petitioners to inform them of their alternatives for redetermining a protested deficiency determination. A follow-up letter was sent on January 27, 2004.

On January 5, 2004, the wife filed her 2000 and 2001 Idaho individual income tax returns using a married filing separate filing status and only reported the income she earned. The policy specialist spoke with the wife's accountant and requested that the returns be filed using a community property split.

On May 24, 2004, the wife's amended 2000 and 2001 Idaho income tax returns were received in which she correctly reported her half of the community income, deductions and withholding. The wife's half of the community income, deductions, and withholding has been removed from the NOD.

The petitioners were married during the years 2000 and 2001. Under Idaho law, earnings of a spouse are presumed to be community property. I.C. § 32-906(1); Martsch v. Martsch, 103 Idaho 142, 645 P.2d 882 (1982). This is true even if the husband and wife are separated and living apart. Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1976) (finding Idaho Code § 32-902 unconstitutional); Desfosses v. Desfosses, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). Generally speaking, income earned during marriage. See generally Poe v. Seaborn, 282 U.S. 101, 51 S.Ct. 58 (1930) (Applying Washington's community property law, the U.S. Supreme Court held that husband and wife were entitled to file separate federal individual income tax returns, each treating one-half of the community income as his or her respective incomes.); United States v. Mitchell, 403 U.S. 190, 91 S.Ct. 1763 (1971) (Under Louisiana community property law, each spouse "has a

vested title in, and is the owner of, a half share of the community income” and is, therefore, subject to federal income tax on that half share.).

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 . . .

[Redacted] has not provided the Commission with a contrary result to the determination of his income based on income information received from the IRS and Idaho community property laws.

Therefore, the Commission must uphold the NOD as modified.

WHEREFORE, the Notice of Deficiency Determination dated May 19, 2003, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$648	\$162	\$146	\$956
2001	647	162	96	<u>905</u>
			TOTAL DUE	<u>\$1,861</u>

Interest is computed through October 27, 2004.

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 included with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]
[Redacted]

[Redacted]