

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18490
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On October 15, 2004, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for taxable years 1998 through 2000 in the total amount of \$32,492.

[Redacted] filed an appeal and the file was transferred to the Legal/Tax Policy Division of the Tax Commission for administrative review.

The taxpayers filed their 1998 through 2001 [Redacted] Idaho individual income tax returns with a filing status of married filing joint with four dependents. Subsequently, TDB identified additional income that had not been reported in the original returns. The source of the additional income was funds embezzled from the taxpayers' employer.

Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency -- Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

TDB issued a deficiency notice, which [Redacted] appealed. He explained why he felt [Redacted] alone should be held responsible for the tax on the additional income. He said he was a [Redacted] driver and was seldom home. He offered that [Redacted] is now incarcerated after confessing to embezzling money from her employer – the same employer that employed him to drive [Redacted]

[Redacted] claimed to have no knowledge of [Redacted]'s crime until after [Redacted] was formally charged. The taxpayers are now divorced. [Redacted] pointed out that the divorce decree states [Redacted] is responsible for all taxes related to the embezzlement. He added: "The total due is her responsibility. She alone profited from and committed the crime."

Embezzled funds are income to the person who takes the money. In this case, [Redacted] was convicted of embezzling from her employer. During its investigation, the TDB obtained copies of District Court records of [Redacted]'s conviction. These records include copies of hundreds of checks written by [Redacted] on behalf of her employer over the course of the three years in question. [Redacted] had endorsed some of the checks and [Redacted] endorsed others. Many of the checks were deposited in [Redacted] joint bank account.

The family's living expenses and other purchases were paid from the funds in that account. Many of the expenses were related to supporting the family. Court records show \$6,000 or more was embezzled each month. The investigative reports show [Redacted] admitted to making many of the deposits to the taxpayers' joint bank account. He said he did not question [Redacted] when she asked him to endorse or deposit checks.

Whether or not [Redacted] knew there was unreported income or the source of the income is not relevant. Idaho is a community property state, which means income received by either spouse is recognized as income received by them jointly as members of the "community." The income

derived from the embezzlement was joint income. Additionally, while there is a federal statute that recognizes the role of an innocent spouse and provides innocent spouse relief, Idaho has no such provision.

Embezzled funds are income in the year they are received. In the present matter, the money was taken over a period of three years. Therefore, the total additional income is divided over the three years according to the amount that was taken each year. The Court ordered [Redacted] to pay restitution. Restitution, which is part of the punishment for the crime, can be deducted as a miscellaneous deduction during the year the restitution or portion of the restitution is paid. This deduction is limited to the person who was ordered by the Court to make restitution.

[Redacted] pointed to the terms of the couple's divorce decree to support his argument that only [Redacted] should be held responsible for the income tax due as a result of additional income. However, the taxpayers filed their Idaho income tax return each of the three years as married filing jointly. Idaho is a community property state; therefore, the state of Idaho has a right to hold the taxpayers jointly and severally liable. One spouse may have a cause of action against the other spouse for violating the terms of the divorce Decree. However, the state remains in a neutral position. Joint and several liabilities simply mean the state may collect any portion of the liability up to the entire amount from either spouse.

After reviewing the information in the file, the Tax Commission finds the taxpayers have not provided the Tax Commission with a contrary result to the deficiency notice. Therefore, the Tax Commission upholds the deficiency as asserted.

WHEREFORE, the Notice of Deficiency Determination dated October 15, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty,

and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$3,717	\$1,859	\$1,551	\$ 7,127
1999	6,004	3,002	2,068	11,074
2000	8,387	4,194	2,218	<u>14,799</u>
			TOTAL DUE	\$33,000

Interest is computed through June 16, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this _____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2005, 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]

[Redacted]

[Redacted]

[Redacted]

Receipt No.
