

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20176
[Redacted],)	
)	AMENDED DECISION
Petitioners.)	
_____)	

[Redacted](petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated April 2, 2007, asserting additional liability for Idaho income tax and interest in the total amounts of \$20,838 and \$14,669 for 2003 and 2004, respectively.

The petitioners were married at all times relevant to this docket. Also during all such times, [Redacted] was domiciled in [Redacted], and [Redacted] was domiciled in Idaho. They filed joint income tax returns for both years with both the Internal Revenue Service and the Commission.

In the income tax returns filed with the Commission, no attempt was made to comply with either the Idaho or the [Redacted] community property laws. The auditor adjusted the portion of the petitioners' income that was deemed to be included in Idaho taxable income and adjusted the petitioners' liability accordingly. The general scheme of the attribution of the income involves deeming half of all of the income to be taxable by Idaho pursuant to the relevant community property laws. In addition to this, all of the income from a source in Idaho not previously included is included in this amount.

The representative for the petitioners contends that the auditor has not properly computed the liability for the petitioners. He has indicated that the computation does not produce a fair result. He further argues that the petitioners complied with most of the criteria for the application of Internal Revenue Code § 66(a) which would preclude the application of the state community

property laws. Although he accounted for the income of the petitioners as if it were separate property, he has not contended that any of the property or income of the petitioners was separate property. He cited no authority to support his position.

Internal Revenue Code § 66(a) stated, in part, the following:

Treatment of community income.

(a) Treatment of community income where spouses live apart.

If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year, then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

If the petitioners had qualified for treatment pursuant to Internal Revenue Code § 66(a), their “earned income” would be treated as though it had not been community property. All other income would be addressed pursuant to the applicable state community property laws. IRC §879 (a)(3) and (4).

It appears that the petitioners concede that they have not met all of the criteria to qualify for treatment pursuant to Internal Revenue Code § 66(a) which would preclude the application of the relevant community property laws. Specifically, they clearly filed joint returns for the years in question. Therefore, the Commission finds that the community property laws do apply to the computation of the petitioners’ Idaho taxable income.

Idaho Code § 32-906 states, in part:

COMMUNITY PROPERTY -- Income from separate and community property -- conveyance between spouses. (1) All other property acquired after marriage by either husband or wife is community property. The income, including the rents, issues and profits, of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income, including the rents, issues and profits, from all or the specifically designated property shall be the separate property of one of the spouses or the income, including the rents, issues and profits, from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

Similarly, Nevada Revised Statutes § 123.220 states, in part:

Community property defined. All property, other than that stated in NRS 123.130 [relating to separate property], acquired after marriage by either husband or wife, or both, is community property unless otherwise provided by:

1. An agreement in writing between the spouses, which is effective only as between them.
2. A decree of separate maintenance issued by a court of competent jurisdiction.
3. NRS 123.190. [relating to gifts pursuant to a written authorization]
4. A decree issued or agreement in writing entered pursuant to NRS 123.259.

There is no indication of any writing between the spouses which would preclude the general rules of the community property laws of the two states from governing the ownership of the income in question. There also is no indication that any of the income-producing property is other than community property. Therefore, the Commission concludes that the community property laws should govern the ownership of the income in question. Accordingly, the

Commission finds that the auditor's inclusion of one-half of all of the income of the community is proper.

In addition, the auditor also included in the computation of Idaho taxable income the income from Idaho sources not already included as being in the half of the community income attributed to Mrs. [Redacted]. Idaho Code § 63-3026A stated in part:

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

The representative for the petitioners contends that the income should be deemed to be the separate property of each of the spouses according to which one was named as the owner of the account or other instrument giving rise to the income. He contends that since they had lived separate and apart and had not commingled their income for several years that should be sufficient to justify keeping the income separate. He contends that most of Internal Revenue Code § 66(a) has been complied with and, therefore, in the interest of justice, the Commission should consider the petitioners to have fully complied with this provision. As stated above, the

representative cited no authority to support this position.

In reviewing the computations, both of the original filings by the petitioners and those done by the auditor, the Commission finds some irregularities not addressed by the petitioners. In attributing certain interest income from financial institutions, the petitioners originally reported some of this as being attributable solely to Idaho. The attribution of this income was not changed by the auditor. The income as community property should be attributed equally to each spouse and to the domicile of each of the petitioners. The Commission finds that this adjustment needs to be made.

WHEREFORE, the Notice of Deficiency Determination dated April 2, 2007, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest (calculated to March 31, 2008):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$17,081	\$4,274	\$21,355
2004	11,764	2,238	<u>14,002</u>
		TOTAL DUE	<u>\$35,357</u>

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

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

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2008, 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]

Receipt No.

[Redacted]
