

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20943
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated February 14, 2008. The Notice of Deficiency Determination asserted an additional liability for Idaho income tax, penalty, and interest in the total amount of \$6,570.54 for 2006.

The petitioner was a resident of the state of Idaho. She was married to [Redacted] during the entire year of 2006.¹ The petitioner filed her Idaho and federal income tax returns with the filing status of single. The questions to be resolved in this docket involve what portion of the couple's income is to be reported by the petitioner.

The staff of the Commission, after obtaining additional information, changed her filing status to that of married filing separately and redetermined the amount of her Idaho taxable income. This redetermination increased the income tax owed leading to the issuance of the Notice of Deficiency Determination mentioned above.

A portion of the additional information received was from the Idaho income tax return filed by her former husband. Included in his income tax return was a schedule of the character and amounts of income that the couple had received showing how the accountant for [Redacted] felt the income of the spouses should be allocated between them.

It appears from the record that there was no antenuptial agreement between the parties and that there were no capital gains or losses from the separate property of the spouses. Further, it

¹ The petitioner got a divorce from [Redacted] in April 2007.

appears that the spouses lived together until April 6, 2006. Accordingly, it appears that all of the income of the parties is community income and should be divided accordingly.

Upon reviewing the schedule provided as a part of [Redacted] Idaho income tax return, it appears that the schedule properly divides the income. The staff of the Commission had found this schedule to be correct, and the income was divided accordingly.

The petitioner has submitted proposals for the division of the income omitting a portion of the income here in question. The income in question is from [Redacted], which appears to have been deemed by the court to be the sole and separate property of Mr. [Redacted]. On August 22, 2008, a magistrate judge ordered the Mr. [Redacted] to, “either: 1) file an amended tax return for the year 2006 clarifying his sole and separate responsibility for the \$192,211 distribution of November 2006 (and pay any and all additional penalties and late fees), or 2) pay such liabilities directly on [Redacted] behalf, on or before the date they are due (along with any and all additional penalties and late fees, if assessed). If such tax liabilities are already past due, Defendant shall choose and perform one of the following options within fourteen (14) days of the date this Order is signed.” No further authority has been provided showing either that the income is separate income or that there is a written agreement between the parties providing that this income should be divided differently than any of the other community income. Generally, the income from separate property is community property. Idaho Code § 32-906. Accordingly, the Commission finds that the income should be split equally as set forth in the Notice of Deficiency Determination.

The petitioner sent a copy of a [Redacted] income tax return to the Commission showing that the petitioner had reported a portion of the [Redacted] income. Omitted from the income reported on the [Redacted] return was half of the distribution from [Redacted] in the amount of \$96,106 (half of \$192,211). It appears that the petitioner filed a California income tax return

reporting the remainder of the [Redacted] income. This return reflected a tax liability to the state of [Redacted]. Therefore, the Commission finds that the petitioner is entitled to a credit for tax paid to the state of [Redacted] in the amount of \$570.

WHEREFORE, the Notice of Deficiency Determination dated February 14, 2008 is hereby MODIFIED, and as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (computed to March 15, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$4,922	\$1,009	\$621	\$6,552

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

An explanation of the petitioner's right to appeal this decision is enclosed.

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.
