



report half of the total community income. He stated his 2005 and 2006 returns were prepared; he just needed to pay for them and pick them up from his preparer. The taxpayer stated he would get his returns in about 30 days.

The Bureau allowed the taxpayer the additional time to provide his income tax returns; however, the taxpayer failed to provide the returns. The taxpayer twice more requested additional time to get his returns from his preparer, but still no returns were provided. Since the Bureau only issued a Notice of Deficiency Determination for 2005, the Bureau obtained information for 2006, prepared an income tax return for the taxpayer, and sent him a Notice of Deficiency Determination for the taxable year 2006. The taxpayer protested the 2006 Notice of Deficiency Determination with the same argument he used for the 2005 Notice of Deficiency Determination; the community property split of income. The taxpayer stated he was sorry he failed to meet the time limits he set in his previous letters and that he would not ask for another extension. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer did not respond to the Tax Commission's letter, so a follow-up letter was sent to the taxpayer. Still the taxpayer failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

### **LAW AND ANALYSIS**

Idaho is a community property state. As such, the income of the community is attributable to the members of the community; in this case, the taxpayer and his ex-wife. The issue is not whether the taxpayer was married during the years in question. The issue is should the community property laws apply to the benefit of the taxpayer.

The taxpayer's ex-wife filed her Idaho income tax returns as married filing separate reporting only her income. She stated that when she prepared her income tax returns, after she and the taxpayer had separated, the taxpayer did not provide her with his income information for a proper accounting. Furthermore, in their divorce decree, which the taxpayer drafted in his own handwriting, the taxpayer declared he would be responsible for the couples' 2005 taxes and each would be responsible for the taxes on their own income for 2006.

Internal Revenue Code section 66(c) provides for a spouse to be relieved of the community income, "if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability." The preceding sentence related to the requirements for which relief could be granted. One of which, the taxpayer's ex-wife did not meet; knowledge of the item of community income. Treasury Regulation section 1.66-4(b) also states that equitable relief may be available if it would be inequitable to hold the requesting spouse liable for the unpaid tax or deficiency. The Regulation states that the factors relevant in making this determination are provided in Revenue Procedure 2000-15 (2000-1 C.B. 447). Revenue Procedure 2000-15, 2000-1 CB 447 was superseded by Revenue Procedure 2003-61, 2003-2 CB 296.

The factors for determining equitable relief found in Revenue Procedure 2003-61, 2003-2 CB 296 include, but are not limited to: 1) marital status, 2) economic hardship, 3) knowledge or reason to know, 4) nonrequesting spouse's legal obligation, 5) significant benefit, and 6) compliance with income tax laws. Of these six factors, five of them weigh in favor of granting relief. The taxpayer is divorced from requesting spouse. There may be an economic

hardship since at the time of this writing the requesting spouse is unemployed. The taxpayer does have a legal obligation according to the divorce decree. The requesting spouse did not get a significant benefit from the unpaid tax liability. And the requesting spouse has made a good faith effort to comply with the tax laws since the years at issue. The only factor not in favor of the requesting spouse is her knowledge or reason to know. According to the taxpayer's ex-wife, she was aware of the unreported income, the taxpayer's wages. She stated she paid their community expenses from joint checking accounts in which the taxpayer's wages were deposited, when money was available. The ex-wife stated the taxpayer did not control his income, but he also did not pay his bills or debts and he refused to file their income tax returns.

The taxpayer and his ex-wife were separated for most of the last half of 2005 and all of 2006. The taxpayer fought the divorce but eventually gave in after he forced a venue change [Redacted]. The taxpayer's divorce was finalized on January 22, 2007. The terms of the divorce were solely determined by the taxpayer.

### **CONCLUSION**

The taxpayer's argument is that Idaho's community property status should only require him to report half of the community income for 2005 and 2006. Generally, that would be the case. However, the taxpayer's ex-wife filed her income tax returns reporting only her income claiming the taxpayer's income information was not made available to her at the time she filed her income tax returns. Considering the information available, and considering that the taxpayer did not provide anything to refute his ex-wife's statements and documentation, the Tax Commission finds it would be inequitable to grant the benefits of the operation of community property law to the taxpayer. Therefore, the Tax Commission upholds the Bureau's determination of the taxpayer's taxable income.

However, subsequent to the issuance of the Notices of Deficiency Determination, the Bureau found withholding information for the taxpayer in the Tax Commission's records. The Bureau modified its report to include the additional withholdings. The Tax Commission agrees the modification should be included and hereby adjusts the Notices of Deficiency Determination accordingly.

The Bureau added interest and penalty to the taxpayer's Idaho tax. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

WHEREFORE, the Notices of Deficiency Determination dated July 27, 2007, and March 17, 2008, are hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, are APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (computed to August 31, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$1,264	\$ 316	\$ 273	\$1,853
2006	1,672	418	256	<u>2,346</u>
			TOTAL DUE	<u>\$4,199</u>

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 \_\_\_\_\_, 2009.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, 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.

---