

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23832
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On August 19, 2010, the Tax Discovery Bureau (TDB) sent a letter to [Redacted] (Petitioner) notifying him that he had failed to submit a taxable year 2006 Idaho income tax return. After Petitioner did not respond to this initial letter, the TDB issued a Notice of Deficiency Determination (NODD). On December 7, 2010, Petitioner protested the NODD; specifically protesting the filing status, adjusted gross income, and tax liability.

Along with the protest letter, Petitioner submitted an Idaho income tax return for taxable year 2006. On this return, Petitioner had selected Married Filing Separately as the filing status and split Petitioner’s income pursuant to Idaho’s community property laws. This benefit resulted in a lower tax liability for Petitioner. The TDB denied this return based upon Internal Revenue Code (IRC), 26 U.S.C. § 66(b). Under this section, the benefits of community property laws may be denied upon a showing that Petitioner:

1. Acted as if he were solely entitled to such income, and
2. Failed to notify Petitioner’s spouse before the due date for filing the return of the nature and amount of such income.

The TDB relied upon a statement on June 20, 2007, made by Petitioner’s spouse that she was separated from her spouse and had no contact with him. Petitioner elected to meet with the Commissioner to have a hearing and present additional facts regarding the protest. This hearing took place on June 23, 2011, and, at such meeting, Petitioner provided facts to rebut the information used by the TDB in their decision to deny the taxable year 2006 income tax return.

IRC 26 U.S.C., § 66(b), only requires Petitioner to prove that either the first or second requirements are not met, not both. In this case, Petitioner did not act as if he were solely entitled to the income he earned. He shared a joint bank account with his spouse for at least seven (7) months during the year, with mortgage payments for the home owned by and lived in by his spouse being paid from the account. There is nothing to suggest that once the funds were deposited into the joint bank account, the funds were somehow kept separate and used separately for Petitioner and his spouse.

It seems clear in this case that the requirements of IRC, 26 U.S.C. § 66(b) are not both met, therefore, Petitioner should not have been denied the benefits of the community property laws.

THEREFORE, the Notice of Deficiency Determination dated December 7, 2010, and directed to [Redacted] is hereby CANCELLED.

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

DATED this _____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.
