

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24814
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated November 15, 2011, issued by the Income Tax Audit Bureau of the Idaho State Tax Commission (Tax Commission) asserting additional tax and interest for taxable years 2008 and 2009 in the total amount of \$1,806. Petitioners disagreed that [Redacted] income could be taxed by Idaho and conversely that all of [Redacted] income can be taxed by Idaho under a community property split allocation. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners filed part-year resident/resident and non-resident/part-year resident Idaho individual income tax returns for taxable years 2008 and 2009, respectively. The Income Tax Audit Bureau (Bureau) selected Petitioners' 2008 and 2009 returns to verify Petitioners' resident status and domicile. In addition, the Bureau questioned the income reported to Idaho due to the fact Petitioners moved to another community property state, but did not make the move at the same time.

The Bureau sent Petitioners a domicile questionnaire designed to determine a taxpayer's state of domicile. Petitioners completed and returned the questionnaire. The Bureau reviewed Petitioners' responses and determined [Redacted] had different domiciles (split domicile) for part of both taxable years 2008 and 2009. The Bureau concluded Petitioners filed the correct Idaho income tax returns (Form 43) with the correct resident status. However, the Bureau also

determined Petitioners' Idaho taxable income was not correctly reported. Petitioners reported only their Idaho source income as taxable by Idaho. Petitioners made no allocation for the community income earned in [Redacted].

The Bureau corrected the Petitioners' 2008 and 2009 Idaho income tax returns allocating one-half of [Redacted] income to [Redacted] and including it as Idaho taxable income. The Bureau sent Petitioners a Notice of Deficiency Determination, which Petitioners protested. Petitioners disagreed with the income allocation to Idaho in that it does not fairly allocate the community income between Idaho and [Redacted]. The Bureau and Petitioners discussed their different positions, but when it became apparent they were at an impasse, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter discussing the options available for redetermining a protested Notice of Deficiency Determination. Petitioners requested a telephone hearing which was held on April 24, 2012. During the hearing, Petitioners presented their argument and provided the following information.

Petitioners moved to Idaho in July 2007. When the company [Redacted] worked for in Idaho closed its doors, [Redacted] found other employment in [Redacted] and moved there in November 2008. [Redacted] and the children stayed in Idaho until July 2009, when Petitioners sold their house. Petitioners stated their returns reported only the income earned in Idaho. Petitioners stated they understood the concept of community property and they believed their income should be allocated 50/50 between the states. Petitioners stated if Idaho gets to tax half of the income earned in [Redacted], then [Redacted] should be able to tax half the income earned in Idaho.

LAW AND ANALYSIS

Idaho Code section 63-3002 states in pertinent part:

Declaration of intent. -- It is the intent of the legislature by the adoption of this act, ...to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. . .

Therefore, all income from Idaho sources, i.e. income earned in Idaho, is taxable by Idaho.

Petitioners do not contest that the wages they earned while Idaho residents are taxable by Idaho.

Petitioners' disagreement comes with Idaho taxing [Redacted] [Redacted] earnings when he was a resident of [Redacted] while [Redacted] was a resident of Idaho.

Idaho and [Redacted] are community property states. Both consider wages as community property and, therefore, community income. *See* Idaho Code section 32-906 and Revised Code of Washington (R.C.W.) section 26.16.030. This is true in Idaho even if the husband and wife are separated and living apart. Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1976) Desfosses v. Desfosses, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). It is likewise true in [Redacted]; however, [Redacted] community property law provides an exception to this general principle where the husband and wife are living separate and apart even though they are not legally divorced. Specifically, R.C.W. section 26.16.140 provides that “[w]hen a husband and wife are living separate and apart, their respective earnings and accumulations shall be the separate property of each.” Thus, under [Redacted] law, earnings of a spouse are community property except where the spouses are separated and living apart, in which case each spouse’s earnings are treated as his or her separate property. However, [Redacted] courts have consistently held that in order for R.C.W. section 26.16.140 to apply, the married couple must be living separate and apart as a result of marital discord. The fact that a couple is living apart is not, by itself, sufficient to give rise to the separate property

treatment of R.C.W. section 26.16.140. Regardless, Petitioners did not argue marital discord; it was their decision to live apart for a short time because of the economics of the time.

Because Petitioners' earnings are considered community income, half the income is attributable to [Redacted] and half is attributed to [Redacted]. In other words, half of [Redacted] wages, both Idaho and [Redacted], are [Redacted] and half of [Redacted] wages are [Redacted]. Therefore, because [Redacted] was a resident of Idaho while [Redacted] was a resident of [Redacted], [Redacted] half of [Redacted] [Redacted] wages is taxable by Idaho. Furthermore, the half of [Redacted] wages that are attributable to [Redacted], by the community property laws, is considered Idaho source income and is taxable by Idaho because the wages were earned by [Redacted] in Idaho.

Petitioners stated this is an unfair and inequitable taxation of their income. Idaho is essentially taxing three-fourths of their income when half is attributable to the spouse in [Redacted] and should be reported only to and taxed only by [Redacted].

Petitioners' statements imply a double taxing of their income by Idaho and [Redacted]. However, [Redacted] does not have an income tax so Petitioners are not double taxed at least on the basis of an income tax. If [Redacted] was an income taxing state, Petitioners could offset any double taxed income with a credit for taxes paid to another state. As for the fairness of the law, the law is, perhaps not perfect. No tax law yet devised has been entirely fair and just to all in its practical workings. Chicago, M., ST.P. & P.R.CO v. HEDGES et al., 5 F. Supp.752 (1933). Nevertheless, by the operation of Idaho's community property law, one-half of [Redacted] earnings are taxable because those earnings are income attributable to [Redacted].

CONCLUSION

Petitioners were domiciled at all times in a community property state where their earnings were considered community income. And, although the division of income and subsequent Idaho taxation of the income does not appear to be fair and equitable, the division and taxation are in accordance with the applicable laws governing community property and Idaho taxation. Therefore, the Tax Commission finds that the Bureau's inclusion of one-half of [Redacted] income and all of [Redacted] income is the correct determination of Petitioners' Idaho taxable income.

THEREFORE, the Notice of Deficiency Determination dated November 15, 2011, and directed to [Redacted] is hereby AFFIRMED.

IT IS ORDERED that Petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$ 214	\$ 35	\$ 249
2009	1,452	168	<u>1,620</u>
		TOTAL DUE	<u>\$1,869</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.

DATED this _____ day of _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, 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.
