

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25649
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated October 2, 2012, asserting income tax, penalty, and interest in the total amount of \$425 for taxable year 2008. The taxpayer disagreed with the Tax Discovery Bureau’s (Bureau) determination of her filing status and, hence, her Idaho taxable income. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

The Bureau received information from the [Redacted] that showed Petitioner received wages in excess of the filing threshold amount provided in Idaho Code section 63-3030. The Bureau reviewed the Tax Commission’s records and found that Petitioner did not file an Idaho individual income tax return for taxable year 2008. The Bureau sent Petitioner a letter asking about her requirement to file a 2008 Idaho income tax return. Petitioner did not respond, so the Bureau obtained additional information from the [Redacted], prepared an income tax return for Petitioner, and sent Petitioner a Notice of Deficiency Determination.

Petitioner protested the Bureau’s determination. Petitioner stated the Bureau did not use the correct filing status, as she was intending to file her return as married filing joint with her now ex-husband. Petitioner stated her ex-husband illegally filed a 2008 income tax return as married filing separate, reporting only his earnings and withholdings. Petitioner stated if she and

her ex-husband filed as married filing joint, they would not have owed any tax, but since he filed illegally as married filing separate, she gets penalized.

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond, so the Tax Commission decided the matter based upon the information available.

### **LAW AND ANALYSIS**

Petitioner received wages in 2008 in excess of the filing requirements for Idaho residents, as stated in Idaho Code section 63-3030. Therefore, Petitioner was required to file an Idaho income tax return.

The return the Bureau prepared for Petitioner reported Petitioner's income and withholdings, and classified her as married filing separate. Petitioner did not dispute that she was required to file an Idaho individual income tax return. She disputes that the Bureau used the filing status of married filing separate when she would have filed a married filing joint return. Petitioner also stated that her ex-husband illegally filed as married filing separate without her knowledge, reporting only the income he earned and his withholdings.

Considering Petitioner's statements, the Tax Commission looked into its records and found Petitioner and her ex-husband filed married filing joint income tax returns for taxable years 2006 and 2007. The Tax Commission also found, as Petitioner stated, that Petitioner's ex-husband filed a married filing separate income tax return for taxable year 2008. Internal Revenue Code section 6013 provides for the filing of a joint income tax return for married individuals at their election. Married individuals are not required to file a joint income tax

return; it is an election that the married couple makes on a year by year basis. Therefore, Petitioner's ex-husband did nothing illegal by filing a married filing separate income tax return for taxable year 2008.

However, Idaho is a community property state and, as such, married individuals share the community assets and debts. Wages are considered community assets, therefore, each individual of the community is considered to have an equal share of the wages. When married individuals decide to file married filing separate income tax returns, the income of the community is reported half by one individual and the other half by the other individual. Therefore, the whole of the community income is reported on the two separate returns.

Since Petitioner was married for all of 2008, the Bureau prepared a married filing separate income tax return for Petitioner. However, the Bureau only included Petitioner's income, rather than a community property split of Petitioner's and her ex-husband's income. Therefore, the Tax Commission re-computed Petitioner's Idaho taxable income in accordance with Idaho's community property laws. The resulting taxable income yielded a refund for taxable year 2008.

Idaho Code section 63-3072 states that for a refund to be credited or issued, a claim for refund must be made within three years of the due date of the return. Petitioner's 2008 return had a due date of April 15, 2009. Since Petitioner did not file a claim for refund within the statutory period and the Notice of Deficiency Determination was issued after the period of limitations, Petitioner is not entitled to the refund for taxable year 2008.

### **CONCLUSION**

Petitioner's earned income exceeded the threshold for the requirement to file an Idaho individual income tax return. Since Petitioner was married throughout the period and

Petitioner's ex-husband filed married filing separate, the correct filing status for Petitioner for taxable year 2008 is married filing separate. However, Petitioner's taxable income should be determined by Idaho's community property laws. Therefore, the Tax Commission modifies the Bureau's determination to reflect Petitioner's share of the community income earned in taxable year 2008.

THEREFORE, the Notice of Deficiency Determination dated October 2, 2012, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

<u>YEAR</u>	<u>TAX</u>	<u>REFUND</u>	<u>REFUND DENIED</u>	<u>TOTAL</u>
2008	\$0	(\$61)	(\$61)	\$0

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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.  
  
\_\_\_\_\_