

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 38986
[Redacted],)	
)	
Petitioners.)	DECISION
)	
)	
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated March 26, 2014, asserting additional liability for Idaho income tax and interest in the total amounts of \$3,935, \$3,928, and \$1,159 for taxable years 2010, 2011, and 2012, respectively.

ISSUE

The issue is whether Idaho can impose its income tax on the wages earned by a resident of another state, and if so, how is that tax liability computed?

[Redacted] were married at all times relevant to this decision. Also during all such times, [Redacted] was domiciled in Idaho and [Redacted] was domiciled in [Redacted]. Taxpayers filed joint tax returns for all years, both with the [Redacted] and the Commission.

The returns submitted by the petitioners for taxable years 2010 through 2012 reported only the income earned by [Redacted]. The auditor adjusted the returns for each taxable year to include the community property portion of the petitioners' income that was deemed to be includable in Idaho taxable income and adjusted the petitioners' liability accordingly.

The petitioners appealed the determination, contending that the auditor has not properly computed their liability for the aforementioned years. The petitioners' appeal states that the Commission erred by including in Idaho taxable income, more than 50 percent of their combined

income in the calculation of their Idaho income tax liability. The petitioners have indicated that the computation does not produce a fair result.

LAW & ANALYSIS

Both the state of Idaho and the state of [Redacted] are community property states and both treat earnings as community property and, therefore, community income. Under Idaho law, earnings of a spouse are presumed to be community property. Idaho Code section 32-906(1); Martsch v. Martsch, 103 Idaho 142, 645 P.2d 882 (1982). This is true 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). Thus, under Idaho law, only death or a legal divorce will disband the community.

[Redacted] community property law also provides that income earned through the labor of a spouse is presumed to be community income. R.C.W. section 26.16.030; In re Marriage of Hurd, 848 P.2d 185 (Wa.Ct.App. 1993) (“Earnings arising from services performed during marriage are community property.”). 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 petitioners have, at no time, indicated that their living arrangement was because of marital discord. Therefore, based on the community property laws of their respective states of domicile, [Redacted]earnings and [Redacted] earnings would be considered community income.

Since the earnings of both petitioners are considered community property, the issue now becomes how to determine the petitioners' Idaho taxable income and Idaho income tax liability.

Idaho Code § 63-3002 states:

Declaration of intent. -- It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; 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. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Idaho taxable income is defined in Idaho Code section 63-3011(C) as "taxable income as modified to the Idaho adjustments specifically provided in this chapter."

Idaho Code section 63-3029 Credit for Income Taxes Paid to Another State states in part: a resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S Corporation, partnership, limited liability company, estate or trust of which the individual is a shareholder, partner, member, or beneficiary, for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter. The petitioners were

informed by the auditor of this provision in Idaho Code and, while petitioners are well aware of the fact that [Redacted] does not have a state income tax, they contend that they have paid tax in [Redacted], but it was through sales, property, gasoline and other taxes. The petitioners undoubtedly did pay these taxes in [Redacted], however, they do not fall under the provision of Idaho Code section 63-3029.

The petitioners' appeal letter also asks how it is fair and equitable that they are taxed on more than 50 percent of their community income. 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., and four other cases. Nos. 511E-514E, 517E. (1933).

CONCLUSION

The petitioners were both domiciled in community property states during taxable years 2010 through 2012, and filed their tax returns for all years with a filing status of Married, filing joint. There are certain exceptions within [Redacted] code and within the state of [Redacted] community property laws that may allow certain taxpayers to treat their earnings as separate income. However, those exceptions are not present in this case. Therefore, the Commission concludes that the community property laws should govern the ownership of the income in question. Accordingly, the Commission finds that the auditor's inclusion of one-half of [Redacted] income and all of [Redacted] income is the proper determination of Idaho taxable income.

THEREFORE, the NODD dated March 26, 2014, and directed to [Redacted] is hereby AFFIRMED and MADE FINAL.

The petitioners have paid the notice in full, therefore, no demand for payment is made or necessary.

An explanation of the petitioners' 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.
