

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 25631
[Redacted],)
)
)
Petitioner.) DECISION
)
_____)

BACKGROUND

On March 28, 2013, the Revenue Operations Division (RO) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted](Petitioner) proposing income tax, penalty, and interest for taxable year 2008 in the total amount of \$10,528.34. The Petitioner filed a timely protest. The file was transferred to the Legal/Tax Policy Division on April 10, 2013, for resolution.

ISSUE

Whether the Petitioner is entitled to claim a share of a loss from a limited liability company (LLC) purported to be community property, even though she is married and filing on a separate basis.

DISCUSSION

The Petitioner filed her 2008 individual Idaho income tax return showing tax and interest due of \$18,820. Sometime during 2008 the Petitioner separated from her husband. She was still married at the end of the year and had a dependent child living in her home, so she filed as head of household. In all prior years on record she had been filing jointly with her husband.

The Petitioner made a couple of payments after filing the original return, and the balance owed was discharged pursuant to a bankruptcy. The Petitioner filed an amended Idaho individual income tax return on October 15, 2012, for taxable year 2008, requesting a refund of \$18,960

based on the loss at issue. The change reported was one half of the loss from a limited liability company interest held in her husband's name. The Petitioner did not have that information at the time she filed her original 2008 return.

Idaho Code section 63-3031(b)(2) states that an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

IDAPA 35.01.01.805.01 requires that a married couple shall use the same filing status with Idaho as used with the [Redacted]. To qualify for head of household status, you must be either unmarried or considered unmarried on the last day of the year. You are considered unmarried on the last day of the tax year if you meet all the following tests¹.

1. You file a separate return.
2. You paid more than half the cost of keeping up your home for the tax year.
3. Your spouse did not live in your home during the last 6 months of the tax year.

You may be able to file as head of household if:

1. You are unmarried or "considered unmarried" on the last day of the year.
2. You paid more than half the cost of keeping up a home for the year.
3. A "qualifying person" lived with you in the home for more than half the year (except for temporary absences, such as school).

However, if the "qualifying person" is your dependent parent, he or she does not have to live with you.

The community property laws of Idaho require that spouses filing separately report all of their separate income and their share of any community income, unless they are considered unmarried under a divorce decree or a separate maintenance agreement. The Petitioner originally filed as head of household with apparently her separate income only. On the amended return she claimed half of a business loss that she claimed was from community property. The Commission requested that she provide some proof that this loss should be treated as community property and that she qualified to be treated as unmarried. Otherwise accepting this loss is not

¹ IRS Publication 17, Your Federal Income Tax for Individuals.

consistent with the method under which she filed. The Petitioner informed us she was unable to provide a copy of her divorce agreement because it had been sealed by the court.

CONCLUSION

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). The burden is on the taxpayer to show the deficiency is erroneous. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

Having presented no information in support of her position, the Petitioner did not meet her burden of proving error on the part of the deficiency determination. Absent information to the contrary, the Commission rejects the Petitioner's refund request.

THEREFORE, the Refund Request made by [Redacted], received October 15, 2012, is hereby DENIED.

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

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
