

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NOS. 26160 & 30805
)
)
Petitioners.) DECISION
)
_____)

BACKGROUND

On January 22, 2014, the Audit Bureau (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Petitioners) proposing income tax, penalty, and interest for taxable year 2010 in the total amount of \$1,956. On January 30, 2014, the Petitioners filed a timely protest. During the protest period, while the file was still in Audit, the Petitioners’ representative, under a Power of Attorney (POA), filed an amended return. The POA filed a Form 43 for Part Year or Non-residents of Idaho. Audit did not accept the method of calculation used in filing that amended return.

On September 17, 2014, the file was transferred to the Legal/Tax Policy Division for resolution. A letter was sent to the Petitioners outlining their options for appealing an NODD. The Petitioners replied and sent a copy of the [Redacted] ([Redacted] audit, which found, for federal purposes, that [Redacted] was residing in [Redacted].

ISSUE

Whether the Form 43, Part Year Resident income tax return, filed as an amended return, was calculated correctly.

DISCUSSION[Redacted]

The petitioners were married during the taxable year in question. Also during taxable year 2010, [Redacted] was domiciled in [Redacted], and [Redacted] was domiciled in Idaho. Originally, they

filed a joint income tax return with both the [Redacted] and a joint full year resident income tax return (Form 40) with the Commission. In the original income tax return filed with the Commission, no attempt was made to comply with either the Idaho or the [Redacted] community property laws.

The [Redacted] audit denied the petitioners' claim that [Redacted] was living in Idaho and should be able to deduct his travel and living expenses while working in [Redacted]. The [Redacted] disallowed the travel expenses and [Redacted] living expenses while working in [Redacted]. The NODD was based on a [Redacted] audit and the adjustments were made to the original joint Idaho Form 40, individual income tax return. The NODD did not recalculate the Idaho income tax liability acknowledging the separate residences.

The Commission finds that the community property laws apply to the computation of the petitioners' Idaho taxable income.

Idaho Code § 32-906 states, in part:

COMMUNITY PROPERTY -- Income from separate and community property -- conveyance between spouses. (1) All other property acquired after marriage by either husband or wife is community property. The income, including the rents, issues and profits, of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income, including the rents, issues and profits, from all or the specifically designated property shall be the separate property of one of the spouses or the income, including the rents, issues and profits, from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

There is no indication of any writing between the spouses which would preclude the general rules of the community property laws of the two states from governing the ownership of the income in question. There also is no indication that any of the income-producing property is

other than community property.

CONCLUSION

The amended Form 43 filed by the Petitioners did not follow the community property laws. The Petitioners are residents of Idaho and [Redacted] respectively and subject to those laws. This decision recalculates the Idaho income tax liability, recognizing the community property laws. The general scheme of the attribution of the income involves deeming half of all of the income to be taxable by Idaho pursuant to the relevant community property laws. All of the Idaho source income is taxable by Idaho.

The Commission finds that these adjustments need to be made to calculate the correct income tax liability for the 2010 taxable year. See Attachment A.

THEREFORE, the Notice of Deficiency Determination dated April 2, 2007, is hereby MODIFIED, and as so modified, is APPROVED and MADE FINAL.

<u>YEAR</u>	<u>REFUND</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	(\$429)	(\$79)	(\$508)

An explanation of the Petitioners' 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.

26160, 30805 - Attachment A.

[Redacted]

Summary of Form 43 Adjustments

	2010	
	Total	Idaho
1. Adjusted Income per Return	112,785	18,288
2. Audit Adjustments		
a. SSI & state refund	(8,145)	
b. 1/2 his wages		40,380
c. 1/2 div & cap loss		(425)
d. 1/2 pension		6,250
e. rental loss		(6,058)
3. Adjusted Income Corrected	104,640	58,435
4.		
a. Itemized Deductions per Return	50,909	
b. Itemized Deductions Audit Adjustment	22,141	
c. State Income Taxes	480	
d. Net Itemized Deductions per Audit	28,288	
e. Standard Deduction	11,400	
Larger of Itemized Deductions or		
f. Standard Deduction	28,288	
g. Personal Exemptions	10,950	
h. Net Standard & Personal Deductions	39,238	
5. Idaho Adjusted Income	58,435	58,435
6. Total Adjusted Income	104,640	
7. Divide Line 5 by Line 6 equals: Idaho Percentage	55.84%	
8. Multiply Line 4g by Line 7 equals: Idaho Percentage of Personal Deductions		21,910
9. Line 5 less Line 8 equals: Net Idaho Taxable Income		36,525
10. Taxable Income per Return		43,261
11. Line 9 less Line 10 equals: Adjustment carried to Schedule 042 line 2a.		(\$6,736)

[Redacted]	
per original return	43,261
2. Adjustments from above	(6,736)
3. IDAHO TAXABLE INCOME REVISED	36,525
4. Corrected Income Tax Liability	2,249
5. Income Tax Liability, before credits	
per original return	<u>2,748</u>
7 GROCERY CREDIT ADJUSTMENT	<u>70</u>
6. ADDITIONAL TAX or (REFUND)	<u>(499)</u>