

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

In the Matter of the Protest of	)	
[Redacted]	)	DOCKET NO. 1-123-395-584
	)	
Petitioners.	)	DECISION
_____	)	

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We uphold the modified Notice of Deficiency Determination (Notice) dated November 27, 2017. This means **you need to pay \$1,172** of tax, penalty, and interest for taxable year 2011. The Commission now DEMANDS immediate payment of this amount.

The Commission’s Tax Discovery Bureau (Bureau) contacted [Redacted] (Petitioners) on June 16, 2016, as they could not find Petitioners’ Idaho individual income tax return for taxable year 2011. Petitioners did not respond to the non-filer letter. The Bureau obtained income information from the Internal Revenue Service (IRS) and prepared a 2011 Idaho resident individual income tax return for Petitioners. The Bureau received a prompt protest of the Notice, along with more information concerning the income shown in the Notice, along with information related to Petitioners’ living arrangements. The Bureau acknowledged Petitioners’ protest and based on the information provided, modified the Notice. Petitioners received a copy of the revised Notice, but they continued to object.

For taxable year 2011 Petitioners filed a federal return, as Married filing jointly with two personal exemptions, and an adjusted gross income of \$66,822. The Bureau used this information to determine Petitioners’ Idaho income tax liability. [Redacted] objected to this determination, saying in his appeal letter that he moved to Wyoming in March of 2011, due to marital discord; therefore, his Idaho tax liability would be based on only three months of Idaho residency. Following this theory, [Redacted] through his Attorney in Fact (AIF), submitted an Idaho

Form 43, part-year resident return with a filing status of Married, filing separately, reporting only his income. The Bureau informed [Redacted] the return submitted was not acceptable as it did not include the Idaho community income, [Redacted] income, and the filing status did not match the federal return filed. However, the Bureau did change its Notice based on the information provided by [Redacted]. The Bureau sent Petitioners a copy of the modified Notice and allowed them an opportunity to withdraw their protest if they agreed with the reduced amount of tax due. Petitioners ceased communications with the Bureau and the matter was referred to the Appeals unit for administrative review.

As part of the administrative review process the Commission sent Petitioners a letter discussing the alternatives for redetermining a protested Notice. Because Petitioners' separation in taxable year 2011 resulted in a divorce, the Commission sent correspondence separately to Petitioners at their respective addresses. During the administrative review process Petitioners did not provide any additional information for consideration nor did they request an informal hearing. Therefore, the Commission now issues a decision in this matter based upon the information in the file.

In the present case, Petitioners separated in taxable year 2011 and divorced in taxable year 2013. [Redacted] abandoned his Idaho domicile in March of 2011 and became a resident of Wyoming. [Redacted] kept her Idaho domicile.

Generally, when one spouse is domiciled in Idaho and the other spouse is domiciled in a separate property state, the income of the spouse domiciled in Idaho is community property. When filing a return, the Idaho spouse must report half of the community income and the spouse domiciled in the separate property state reports the other half of the community income to Idaho. Under Idaho law, earnings of a spouse are presumed to be community property. *See Idaho Code § 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. *See Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169

(1976) *Desfosses v. Desfosses*, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). Under Idaho law, only death or a legal divorce will disband the community. The return filed by [Redacted] does not follow Idaho community property laws.

Additionally, if a husband and wife choose to file a joint return for federal purposes, they must file a joint return for state purposes. *See* Idaho Code § 63-3031(c). The Commission is unable to accept a Married, filing separate Idaho individual income tax return.

Idaho Code § 63-3031(b)(3) states that if a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. The return submitted by [Redacted] showed a tax due of \$661, which he paid in full. However, as mentioned previously, this return does not accurately reflect Petitioners' Idaho income tax liability as it does not include the community income and the filing status did not match that on the federal return filed by Petitioners. The money received will be applied to Petitioners' 2011 joint liability, but both parties are liable for the entire amount of tax due, including penalties and interest.

The Bureau used information obtained from the IRS to determine Petitioners' Idaho income in the original Notice; Married, filing jointly, two exemptions, and an adjusted gross income of \$66,822. The Notice was modified twice by the Bureau after receipt of more information from Petitioners. The Bureau modified the Notice to reflect [Redacted] status as a part-year resident and to remove retirement income that was not Idaho sourced. Withholding in the amount of \$35 was found by the Bureau and allowed to offset the amount of tax due.

It is well settled in Idaho that a Notice issued by the Commission is presumed to be correct. *See Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)); *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on Petitioners to show that the deficiency is erroneous. *Id.* Petitioners have not set forth any

substantive argument or documentation to show that the modified Notice, prepared by the Bureau is incorrect. Therefore, the Commission finds that the amounts shown in the Notice, as MODIFIED, are correct.

THEREFORE, the Notice dated November 27, 2017, and directed to [Redacted] as modified, is APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$1,219	\$305	\$309	\$1,833
			Less Payment	<u>(661)</u>
			TOTAL DUE	<u>\$1,172</u>

Interest is computed to February 5, 2019.

An explanation of Petitioners' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
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.

---

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
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.

---