

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|--------------------------|
| In the Matter of the Protest of |) | |
| [Redacted] |) | DOCKET NO. 0-498-366-464 |
| |) | |
| |) | |
| Petitioners. |) | DECISION |
| _____ |) | |

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We uphold the Notice of Deficiency Determination (Notice) dated August 27, 2018. This means **you need to pay \$164,613** of tax, penalty, and interest for taxable years 2011 through 2016. The Commission now DEMANDS immediate payment of this amount.

[Redacted] filed a prompt protest and petition for redetermination. He did not request an informal hearing and has not provided any additional information for the Commission’s consideration.

[Redacted] (Petitioners) were residents of Idaho during the years under review and timely filed their Idaho individual income tax returns for taxable years 2011 through 2016.

In 2017, the auditor from the Commission’s Tax Discovery Bureau learned [Redacted] plead guilty to grand theft, perjury, and tax evasion. [Redacted] embezzled \$197,979, \$222,948, \$211,305, \$197,979, 204,397, and \$200,832, respectively for tax years 2011 through 2016. The auditor examined Petitioners’ income tax returns for these years but could not find the embezzled funds in their gross income. The auditor determined an adjustment to Petitioners’ 2011 through 2016 was called for, but the general three-year statute of limitations provision set out in Idaho Code § 63-3068(a) had expired for taxable years 2011 through 2013. However, Idaho Code § 63-3068(c) gives an exception to the general three-year statute of limitation for issuing a deficiency

notice. This subsection states:

In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

I.C. § 63-3068(c)

As underreporting large amounts of income infers willfulness, *See Holland v. United States*, 348 U.S. 121, 139 (1954), the Bureau issued Petitioners a Notice for these years, increasing their adjusted gross income to include the embezzled funds.

Through his bankruptcy attorney, [Redacted] protested the Notice, stating in his letter that the Notice issued by the Commission is in violation of the Order of Discharge and 11 U.S.C § 524 ([Redacted] filed a Chapter 7 bankruptcy on November 15, 2017, and received an Order of Discharge on May 10, 2018). [Redacted] further reserved the right assert all other claims and defenses to the Commission's actions, including but not limited to innocent spouse.

[Redacted] argued in his protest that the taxes in this appeal were discharged by his bankruptcy, and by issuing the Notice the Commission willfully violated Order of Discharge. [Redacted] misunderstands the bankruptcy law governing this tax appeal. Upon filing a bankruptcy, an automatic stay is imposed by § 362 of the U.S. Bankruptcy Code, which halts some actions by creditors to collect against the debtor and the debtor's property. However, an exception exists as to the Idaho State Tax Commission for the following activities, as set forth in 11 USC § 362(b)(9):

- (A) an audit by a governmental unit to determine tax liability;
- (B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;
- (C) a demand for tax returns; or

- (D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

Id

Only discharged debts are subject to the injunction imposed by the Order of Discharge. The Commission did not violate the Order of Discharge, because taxes at issue in this appeal were not discharged by [Redacted] Chapter 7 bankruptcy. Pursuant to 11 USC § 523(a)(1)(A), a debtor is not discharged from any debt for tax “of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed[.]” The taxes in this appeal are priority debts that were excepted from [Redacted] bankruptcy discharge, because they are 1) taxes measured by income, 2) for taxable years ending before the date of the filing of the petition, and 3) were not assessed before, but assessable, under applicable law, after the commencement of the case. *See* 11 USC § 507(a)(8)(iii). The taxes in this appeal are for tax years 2011 through 2016 that ended before [Redacted] filed bankruptcy in 2017 and were not assessed until August 27, 2018, after the bankruptcy petition, pursuant to Idaho Code §§ 63-3045 and 63-3068(c); therefore, they are priority debt under 11 U.S.C § 507(a)(8)(iii)

The U.S. Supreme Court has ruled that unlawful, as well as lawful, gains are comprehended within the term ‘gross income.’ *See James v. United States*, 366 U. S. 213, 218 (1961).

Idaho Code § 63-3031(b)(3) defines the responsibility of a married couple making the election to file their tax returns with a filing status of married filing joint:

- (3) 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.

Because Petitioners chose to file their tax returns as married filing joint, the State of Idaho holds Petitioners jointly and severally liable. One spouse may have a cause of action against the other spouse. However, the state stays in a neutral position. Joint and several liabilities simply mean the state may collect any part of the liability up to the entire amount from either spouse.

Petitioners filed their 2011 through 2016 Idaho income tax returns as married filing joint. Therefore, both are responsible for the tax, jointly and severally. [Redacted] said in his appeal he “reserves the right to assert all other claims and defenses to the ISTC’s actions, including but not limited to innocent spouse.” For taxable years 2011 through 2013, Idaho Code did not include a provision for innocent spouse. Beginning in taxable year 2014, a provision for innocent spouse did exist, but [Redacted] did not give any documentation to show he is entitled to relief under Idaho Code § 63-3022T¹ which states in relevant part:

[63-3022T]63-3022S.RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN. (1) An individual who has filed a joint return and who has been granted relief from joint and several liability by the internal revenue service shall have such relief recognized, granted and honored by the state tax commission for state income tax purposes.

Petitioners have not given documentation or authority to show that the embezzled funds are not taxable nor have they shown [Redacted] is entitled to innocent spouse relief under Idaho Code. In addition, their claim the Commission has violated the Order of Discharge is unfounded. Therefore, the Commission finds that the auditor’s determination must be affirmed.

The auditor added interest and penalties to Petitioners’ tax deficiency. The Commission reviewed those additions and found them proper per Idaho Code §§ 63-3045, 63-3046(b) and 63-3046(d), respectively.

¹ Idaho Code §63-3022T was repealed effective July 1,2017. For present comparable provisions see Idaho Code § 63-3050A.

THEREFORE, the Notice dated August 27, 2018, and directed to [Redacted]

is hereby APPROVED and MADE FINAL.

IT IS ORDERED that Petitioners pay the following tax, penalty, and interest (calculated to July 19, 2019):

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|----------------|-----------------|------------------|
| 2011 | \$15,444 | \$9,266 | \$4,258 | \$28,968 |
| 2012 | 16,498 | 9,899 | 3,939 | 30,336 |
| 2013 | 15,635 | 9,381 | 3,221 | 28,237 |
| 2014 | 14,650 | 8,790 | 2,432 | 25,872 |
| 2015 | 15,125 | 9,075 | 1,905 | 26,105 |
| 2016 | 14,861 | 8,917 | 1,317 | <u>25,095</u> |
| | | | TOTAL DUE | <u>\$164,613</u> |

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

DATED this _____ day of _____ 2019.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019,
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 _____ 2019,
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.
