

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

In the Matter of the Protest of	)	
[Redacted]	)	DOCKET NO. 1-700-734-976
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated June 11, 2018. Petitioners disagreed that all their income was taxable by Idaho. The Tax Commission reviewed the file and found that Petitioners correctly filed their 2017 Idaho individual income tax return.

**BACKGROUND**

Petitioners timely filed their 2017 Idaho individual income tax return. During processing, Petitioners' return was identified as a return with a potential error. The Taxpayer Accounting Unit (Taxpayer Accounting) reviewed Petitioners' return and sent them a letter requesting additional information. Petitioners did not respond within the time specified by Taxpayer Accounting, so Taxpayer Accounting sent Petitioners a tax correction letter. Twelve days later Taxpayer Accounting sent Petitioners a Notice of Deficiency Determination.

Petitioners protested the Notice of Deficiency Determination. Petitioners stated [Redacted] lived and worked in Washington state in 2017. Petitioners stated they reported half the income earned in Washington. Petitioners stated none of [Redacted] income was earned in Idaho.

Taxpayer Accounting reviewed Petitioner's protest and referred the matter to the Tax Commission's Appeals Unit (Appeals). Appeals reviewed the matter and sent Petitioners a letter that outlined the options available for redetermining a Notice of Deficiency Determination. Petitioners requested a hearing. Appeals scheduled a hearing for August 15, 2018. During the

hearing Petitioners' representatives (Representatives) explained that they prepared Petitioners' Idaho income tax return according to the community property laws of Idaho and Washington.

Representatives stated Petitioners moved to Idaho from Washington in 1994. In 2001, [Redacted] moved back to Washington because he could earn more in Washington versus Idaho. [Redacted] stayed in Idaho with their kids. [Redacted] lived and worked in Washington until 2018 when he retired. Both Petitioners now live in Idaho.

During the entire time [Redacted] was working in Washington, [Redacted] and kids stayed in Idaho. [Redacted] was born and raised in Washington, so he had family there that he sometimes stayed with during those years. [Redacted] did rent an apartment in Washington, but for the last six years he was in Washington [Redacted] lived with his sister-in-law.

Representatives stated Petitioners' Idaho return accounted for the community property income [Redacted] earned in Washington. Representatives stated [Redacted] had his employer split his income between Washington and Idaho, he also had Idaho withholdings on the Idaho community share. Representatives stated Petitioners' Idaho return was prepared following Idaho's community property guidelines.

## LAW AND ANALYSIS

Idaho Code § 63-3002 states the purpose of the Idaho income tax act is to impose a tax on residents of the state of Idaho measured by income wherever derived, and on the income of nonresidents derived from activity or sources within Idaho. In the case of community property, generally Idaho taxable income consists of all the income from Idaho sources plus one-half the income of the non-resident spouse living in the other community property state. *See Parker v. Idaho State Tax Com'n*, 148 Idaho 842 (2010).

Idaho and Washington are community property states. Both consider wages as community property and therefore community income. See Idaho Code § 32-906 and Revised Code of Washington (R.C.W.) § 26.16.030. This is true in Idaho 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). It is likewise true in Washington; however, Washington's 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. § 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 Washington 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, Washington courts have consistently held that for R.C.W. § 26.16.140 to apply, the married couple must be living separate and apart because of marital discord. The fact that a couple is living apart is not, by itself, sufficient to give rise to the separate property treatment of R.C.W. § 26.16.140. Regardless, Petitioners did not assert marital discord; it was their decision to live apart because of [Redacted] earning power in Washington.

Because Petitioners' earnings are considered community income, half the income is attributable [Redacted] and half is attributed to [Redacted]. In other words, half of [Redacted] Washington wages are [Redacted] and half of [Redacted] Idaho wages are [Redacted]. Therefore, because [Redacted] was a resident of Idaho and [Redacted] was a resident of Washington, [Redacted] half of [Redacted] Washington wages is taxable by Idaho. Furthermore, the half of [Redacted] wages that are attributable to [Redacted] by the community property laws, is considered Idaho source income and is taxable by Idaho because [Redacted] wages were earned in Idaho.

Petitioners' 2017 Idaho income tax return was prepared and reported in such a manner. Therefore, based on the information provided the Tax Commission finds that Petitioners correctly filed their 2017 Idaho income tax return.

CONCLUSION

Petitioners lived and worked in different states. Both states, Idaho and Washington, are community property states. Petitioners' 2017 Idaho individual income tax return allocated Petitioners' income based on the community property laws of Idaho and Washington. The Tax Commission's review of Petitioners' return and their circumstances found that Petitioners' Idaho taxable income is accurately reported on their 2017 Idaho individual income tax return.

THEREFORE, the Notice of Deficiency Determination dated June 11, 2018, and directed to [Redacted] is CANCELLED.

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

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.

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