

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-713-447-936
)	
Petitioners.)	DECISION
<hr style="width: 45%; margin-left: 0;"/>)	

The Intrastate Income Tax Audit Bureau (Bureau) sent (Petitioners) a Notice of Deficiency Determination (Notice) for tax years 2019 through 2021. Petitioners protested, disagreeing with the Bureau’s community property adjustments. The Tax Commission has reviewed the matter and hereby upholds the Notice issued by the Bureau.

BACKGROUND

Petitioners filed ID Form 43 returns for tax years 2019 through 2021, reporting as a Washington resident and as an Idaho resident. This resulted in Petitioners only reporting income and none of The Bureau conducted an examination of Petitioners’ returns requesting information regarding income tax returns filed in other states, separate property agreements, and a schedule of residencies for both and Petitioners provided income tax returns filed in Arizona, Montana, and California. Petitioners stated that lived on his sister’s property in Washington while lived in their home in Idaho with their kids during the years in question. The Bureau reviewed the information provided and sent Petitioners a Notice to assert a community property allocation for income. Petitioners protested, stating that is not an Idaho resident, nor did he work in Idaho during the years in question. The Bureau acknowledged their protest and transferred the case to the Tax Commission’s Appeals Unit (Appeals).

Petitioners requested an informal hearing with Appeals to discuss the case. During the hearing, explained his living situation over the last ten years. was originally from Canada and went through the process of getting her green card to be with and their children in the United States. During that time, they lived in Washington mostly, but eventually moved and purchased a home in Idaho in 2018. claimed to never truly reside at the home in but would be in the area during visits with his kids. Petitioners' relationship appears to be complicated and their living situations during the years in question are not clear. According to court documents available to the Tax Commission, Petitioners were legally separated in July of 2020. When questioned, explained the reason for the legal separation was so could get financial aid for school. The Tax Commission has reviewed the information available and makes the following analysis.

LAW AND ANALYSIS

Idaho and Washington are community property states. Both consider wages as community property and therefore community income. See Idaho Code section 32-906 and Revised Code of Washington (R.C.W.) section 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. section 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. section 26.16.140 to apply, the married couple must be living separately and apart because the marriage was defunct. 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. section 26.16.140. The definition of a “defunct” marriage lies in the facts and circumstances in each case. Courts consider the financial support each spouse provides the other, whether each party agrees with the separation, and the physical location of each spouse. See *Seizer v. Sessions*, 132 Wn.2d 642, 940 P.2d 261 (1997).

Based on the information presented to the Tax Commission, [redacted] provided substantial financial support for [redacted] and their children. Additionally, [redacted] owns the home [redacted] and their children reside in and does not charge her rent to stay there. During the informal hearing and communication with the Bureau, [redacted] stated on multiple occasions that the reason why they are not divorced yet is because [redacted] will not sign divorce papers. Washington courts do not support the separation of assets in these situations where one spouse is not in agreement with separation.

In re Marriage of Short, 125 Wn.2d at 871:

“A marriage is considered "defunct" when both parties to the marriage no longer have the will to continue the marital relationship.

In other words, when the deserted spouse accepts the futility of hope for restoration of a normal marital relationship, or just acquiesces in the separation, the marriage is considered "defunct" so that the "living separate and apart" statute applies.”

Under the criteria laid out in Washington law, it does not appear that Petitioners were in a defunct marriage. Therefore, community property rules still apply under Idaho Code section 32-906. In the Notice issued by the Bureau, Petitioners’ Idaho taxable income was adjusted to include 50% of [redacted] income no matter the source. The Bureau also allowed credit for taxes paid to other states, child/dependent care deductions, and percentage share of itemized/standard deductions.

CONCLUSION

Petitioners were sent a Notice for tax years 2019, 2020, and 2021 to include community property income not originally reported on their returns. The Tax Commission completed an analysis of the facts and circumstances at hand and determined the community property rules should stand, and the adjustments made by the Bureau better reflect Petitioners’ Idaho taxable income.

The Bureau added interest and penalty to Petitioners’ tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination sent on April 4, 2023, directed to
is AFFIRMED.

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>
2019	\$4,441	\$222	\$608	\$5,271
2020	4,652	233	501	5,386
2021	2,515	126	218	2,859
			TOTAL DUE:	\$13,516

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

DATED this _____ day of _____ 2024.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2024,
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:

Receipt No.

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I hereby certify that on this _____ day of _____ 2024,
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