BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of , Petitioner.	)))))))	DOCKET NO. 1-835-464-704 DECISION

Taxpayer Accounting issued a Notice of Refund Determination (Notice) to (Petitioner) for tax period 2018 after she filed an amended return. Petitioner filed a timely appeal, and the case was transferred to the Tax Commission's Appeals Division (Appeals). The Tax Commission reviewed the matter and hereby issues its decision upholding the Notice.

BACKGROUND

Petitioner filed an amended 2018 return to include 50% of an overpayment from her 2017 married filing joint return that she had omitted on her original return. Petitioner and her spouse had elected on their 2017 tax return that the 2017 overpayment be treated as a credit against tax for 2018. A credit against tax from a prior year overpayment is commonly known as a "refund roll forward" and is applied as an estimated payment towards the subsequent tax year. Petitioner and her spouse divorced prior to the filing of the 2018 tax return. The $4,454 overpayment from 2017 was mostly the result of a $21,919 joint estimated payment and $6,000 of withholding from wages. Petitioner argues she is entitled to half of the overpayment because the 2017 return was a joint return and it should be split due to Idaho community property laws. Taxpayer Accounting denied her claim to the tax credit because it was already 100% claimed on another return. Petitioner filed a timely appeal, and it was transferred to Appeals for redetermination.

An informal hearing was conducted with Petitioner's representative, (Representative), to discuss the matter further. Representative stated that there were no formal

agreements from a divorce decree or similar that covered how Petitioner and her ex-husband would split the overpayment. He stated that the overpayment was omitted on the original return because Petitioner had a different accountant prepare her returns after the divorce who was not aware of the overpayment from 2017. When Petitioner sought a new accounting firm for later years, Representative caught the mistake and decided to amend Petitioner's return. Representative argues that the overpayment was a community asset, and in the case of divorced couples, overpayments should be reported 50% on each return.

ISSUE

The issue in this case is whether Petitioner entitled to half of the overpayment of tax from 2017 that her ex-spouse already claimed in full as an estimated payment on his 2018 tax return.

LAW AND ANALYSIS

Idaho Code section 32-906 provides that all property acquired after marriage by either husband or wife is community property. The income of property is also community property unless a written agreement specifically provides otherwise. *Id.* Here, the estimated payment is not property or income, but rather it is a prepayment towards a future liability from a community asset—wages. As evidenced by the 2017 tax return, Petitioner and her ex-spouse agreed to apply the overpayment as an estimated payment towards their 2018 tax liability. Due to their divorce, Petitioner's, and her ex-spouse's tax liability in the year 2018 was separate, and the community asset from 2017 was used to pay the ex-spouse's separate 2018 tax liability. Federal and state courts in Idaho have held that a community asset can be used to pay a separate liability. *In re Martell*, 349 B.R. 233, 236 (Bankr. D. Idaho 2005); *Action Collection Serv., Inc. v. Seele*, 138 Idaho 753, 758, 69 P.3d 173, 178 (Ct. App. 2003). The Tax Commission looks to federal law for further guidance in this matter.

As many provisions under the Idaho Income Tax Act are modeled on or substantially similar to the provisions under the Internal Revenue Code (IRC), the Tax Commission finds the regulations and interpretations of the IRC to be persuasive in this matter. *See* Idaho Code § 63-3004; IDAPA 35.01.01.015. Individuals are not required to make estimated payments under the Idaho Income Tax Code. However, the Tax Commission treats estimated payments as prepayments of an individual's income tax, the same as under federal law. Treasury Regulation section 1.6654-2(e)(5)(ii) provides guidance on the application of joint payments of estimated tax on separate returns, as follows:

> (A) Although a husband and wife may make a joint payment of estimated tax, they, nevertheless, can file separate returns. If they make a joint payment of estimated tax and file separate returns for the same taxable year with respect to which the joint payment was made, the payment made on account of the estimated tax for that taxable year may be treated as a payment on account of the tax liability of either the husband or wife for the taxable year or may be divided between them in such manner as they may agree.
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> (B) In the event the husband and wife fail to agree to a division of the estimated tax payment, such payment shall be allocated between them in accordance with the following rule. The portion of such payment to be allocated to a taxpayer shall be that portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 of the Internal Revenue Code shown on the separate return of the taxpayer (plus, if applicable, the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return of the taxpayer) bears to the sum of the taxes imposed by chapter 1 of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse (plus, if applicable, the sum of the taxes imposed by chapter 2 of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse).

The Internal Revenue Service deems this guidance applicable both in community property and separate property states. *See* IRS Publication 555, pp. 1 and 7. The guidance is illustrated by the following example. Assume husband (H) and wife (W) make a joint payment of estimated tax of $19,500. For the taxable year, H and W file separate returns and do not agree how to split the estimated payment. H has a tax due of $12,000 and W has a tax due of $8,000. They have a

combined tax liability of $20,000. Using the formula outlined in the regulation above, H's portion of the estimated payment is calculated by dividing his tax due of $12,000 by the combined tax liability of $20,000, which equals 60%. Similarly, W's portion of the estimated payment is calculated by dividing her tax due of $8,000 by the combined tax liability of $20,000, which equals 40%. Therefore, H is entitled to claim 60% of the estimated payment ($19,500 x 60% = $11,700) and W is entitled to claim 40% of the estimated payment ($19,500 x 40% = $7,800).

Pursuant to Rev. Rul. 76-140[1], the filing of separate returns by divorced taxpayers dividing the aggregate amount of an overpayment from their previous year's joint return between them is evidence that the parties reached an agreement on the allocation of the overpayment, obviating the need to apply the formula in Treasury Regulation section 1.6654-2(e)(5)(ii). If one of the divorced spouses subsequently claims a refund on the grounds that a greater part of the estimated tax payment should have been credited against that spouse's tax liability, that party will have the burden of proving that the separate returns dividing the overpayment did not reflect an agreement between the former spouses. *Id.* Where a refund claim is not supported by any substantive evidence that the parties had ***not*** filed their separate returns pursuant to an agreement as to the allocation of

[1] Specifically, Rev. Rul. 76-140 states as follows: The allocation rule of section 1.6015(b)-1(b) of the regulations only applies when the parties are unable to agree to a division of their estimated tax payments. If, in filing their separate returns, the parties had both claimed all or most of the estimated tax payments, the Internal Revenue Service would conclude that no agreement had been made and would allocate the payments using the formula prescribed by section 1.6015(b)-1(b). However, when the parties file separate returns that divide the aggregate amount of the estimated tax payments between them, as in this case, this is evidence that the parties reached agreement on the allocation, and that the allocation rule of section 1.6015(b)-1(b) does not apply. If one of the divorced spouses subsequently claims a refund on the ground that a greater part of the estimated tax payment should have been credited against that spouse's tax liability, that party will have the burden of proving that the separate returns did not reflect an agreement between the former spouses.

*Treas. Reg. § 1.6015(b) was removed by T.D. 9224, 70 FR 52300, Sept. 2, 2005, and replaced by Treas. Reg. § 1.6654-2(e)(5)(ii).

their estimated tax payment, the refund claim is disallowed, and the IRS will not reallocate the estimated tax payment. *Id.*

Applying the guidance outlined in Rev. Rul. 76-140, the Tax Commission will treat the separate original tax returns of Petitioner and her ex-spouse as an agreement on the allocation of their estimated tax payment from 2018. The original 2018 returns of both individuals in question divided the aggregate estimated payment between them by one party claiming 100% and one party claiming 0%. During the informal hearing, Representative stated that Petitioner and her ex-husband did not agree on how the estimated tax payment should be applied. Representative explained that the estimated payment was originally omitted because Petitioner went to a different accountant after the divorce who was not aware of it. Perhaps this explanation is reasonable; however, there is no written evidence of a disagreement such as a section of a divorce decree. The Tax Commission finds that Petitioner has not rebutted the presumption under Rev. Rul. 76-140 that the original 2018 returns are evidence of their agreement.

Notwithstanding the conclusion under Rev. Rul. 76-140, the Petitioner is not entitled to a refund of the estimated tax even when applying the formula outlined in Treasury Regulation section 1.6654-2(e)(5)(ii), where parties do not agree to a division of the estimated tax payment. Petitioner's tax due for 2018 is zero ($0). Zero ($0) divided by Petitioner's and her ex-spouse's combined tax liability is $(0) zero, because zero ($0) divided by any number equals zero ($0).

CONCLUSION

Idaho is indeed a community property state; however, Idaho Code section 32-906 does not dictate the result in this case, because the estimated payment is not community property. Rather, a community asset (wages) was used to pay a separate tax liability. Where Idaho does not have specific case law regarding a tax situation, Internal Revenue Service rulings and regulations are

persuasive. Applying the guidance outlined in Treasury Regulation section 1.6654-2(e)(5)(ii) and Revenue Ruling 76-140, the Tax Commission finds that Petitioner is not entitled to the 2017 joint estimated payment on her 2018 Idaho return.

Petitioner's refund was reduced by the Notice, therefore, no DEMAND for payment is made or necessary.

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

DATED this _____ day of _____ 2022.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2022, 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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