IDAHO
State Tax Commission

COMMUNITY PROPERTY

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Idaho is a community property state. The community property laws of Idaho generally treat property and income acquired during marriage differently than other property. This may affect how spouses file their federal and state income tax returns. The intent of this publication is to highlight some of the issues taxpayers should consider in identifying community property and reporting community income on their income tax returns. It does not provide comprehensive explanation of federal or Idaho tax laws or rules.

Community Property States

Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Community property laws are not uniform among these states. Each state adopts its own community property laws and may not reflect the treatment contained in this publication. This publication only reflects treatment of community property under Idaho law and may not be used to interpret another state's community property laws.

Community Property

Generally, community property is all property, including wages and other earnings, acquired during marriage by either spouse. Community property is owned by the "community" of the marriage, or in other words, owned jointly by husband and wife. Certain property acquired during marriage is excluded from community property as described below (See Separate Property).

Community Income

Income generated from community property is generally community income. It also includes wages and other earnings acquired during marriage by either spouse. Generally, if you are domiciled in Idaho, income from separate property is community income unless a written agreement, such as a prenuptial agreement, specifically identifies the property and the income as separate.

Separate Property

Separate property is:

- Property owned separately by a spouse before marriage.
- Property received separately as a gift or inheritance, even if such property is received by a spouse during marriage.
- Property bought with separate property funds.
- Money earned while domiciled in a separate property state.
- All property declared separate in a valid pre- or post-nuptial agreement.

You must keep separate property separate from other assets. If you use the property for community purposes, or if you mix separate income and expenses with community income and expenses, the property may lose its separate character in spite of any written agreements.

Separate Income

As stated above, income from separate property is generally community property. Nevertheless, if there is a written agreement that governs the nature of income generated by separate property, then the nature of the income will be determined in accordance with that agreement. Such an agreement will be honored so long as the income is kept separate from community income. Additionally, the natural increase in value of separate property may retain its separate nature.

Real Estate Income

Income from real property (real estate) is designated as separate or community, depending on the laws of the state where the property is located. For example, if the property is in Idaho and the owners are domiciled in a separate property state, Idaho will treat the income from the real property as community income.

Retirement Income, Pensions, and QDROs

IRA distributions are not taxed according to the normal community property rules. Distributions from IRAs are taxable only to the distributee spouse. Other retirement income may be subject to community property rules. In the case of a divorced taxpayer, the taxability of retirement income is sometimes specifically addressed in a qualified domestic relations order (QDRO). For more information on QDROs, see IRS Publication 575. For more information on Idaho's PERSI plan and divisions upon separation, see http://www.persi.idaho.gov/documents/divorce.pdf.

Filing Status and Requirements

You must use the same filing status for your Idaho income tax return that you use for your federal income tax return. If you file a joint return, you can't change your filing status to "married filing separate" after the due date of the return.

If you and your spouse file "married filing joint" and you are both residents of Idaho, you must include all income on the joint return. Also, any separate income earned by you or your spouse must be reported on the joint return.

If you and your spouse decide to file separately, each of you must report half of the community income and deductions plus any of your separate income and deductions on your separate return.

You and your spouse will generally equally divide community business and investment expenses. If one of you owns an investment that generates separate income and pays the expenses from separate funds, that spouse can deduct those expenses. Personal expenses paid from community funds are divided equally between spouses.

Additionally, if your filing status is "married filing separate," you and your spouse must either both itemize or both take the standard deduction. If your spouse itemizes, you must also itemize, even if your itemized deductions are less than the standard deduction.

If you file separate returns, you and your spouse must each attach an allocation worksheet to show how you divided your income and deductions. You can amend your return to change your filing status from "married filing separate" to "married filing joint" after the due date. You would also need to amend your Idaho return to match the change in your federal filing status.

Spouses with Separate Domiciles

A "domicile" is the place where you have your fixed, permanent home and principal establishment. It's the place you intend to return to whenever you are away. You can have more than one home or residence, but you can only have one domicile at a time.

The laws applicable to marital assets will largely be determined by the spouses' domiciles (one exception, as described above is real estate). It is possible for spouses to maintain domiciles in separate states with different laws regarding marital property.

If your spouse is domiciled in another state, you and your spouse may each be required to report to Idaho half of the community income plus any additional income from Idaho sources.

Treatment of Community Income When Spouses Live Apart

BOTH SPOUSES DOMICILED IN IDAHO

If you and your spouse live apart but are both domiciled in Idaho and file a joint return, all income must be reported to Idaho. If you and your spouse file separate returns, each of you will report half of the combined community income plus any separate income.

ONE SPOUSE DOMICILED IN IDAHO, THE OTHER SPOUSE DOMICILED IN SEPARATE PROPERTY STATE

The income of a spouse domiciled in Idaho is generally community property. The Idaho spouse will report half of the community income and any of his or her separate income from separate property.

The spouse domiciled in the separate property state reports the other half of the community income to Idaho. The separate property state spouse's income is generally not reportable to Idaho.

Example: Bill is domiciled in Idaho and earned wages of

$20,000 during the year. His wife, Pam, is domiciled in Oregon and earned $30,000 in wages. Bill and Pam file a joint federal income tax return.

As an Idaho resident, Bill must include his share of community income from all sources on the joint Idaho return. (½ Bill's wages = $10,000)

As a nonresident living in a non-community property state, Pam's income is separate property and will not be taxed in Idaho. Pam is only required to include her share of the community income from Idaho sources on the joint Idaho return. (½ Bill's wages = $10,000)

All of the community income attributable to Idaho will be reported on the joint return. Bill does not have an interest in Pam's income earned in Oregon because it is not community property. Therefore, none of Pam's income earned in Oregon will be taxed by Idaho.

Example: Using the same facts above, except Bill and Pam file married filing separate.

As an Idaho resident, Bill must include his share of community income from all sources on his separate return. The Idaho community income equals $20,000 which arose from Bill's wages. Bill will report ½ of this amount on his separate Idaho resident income tax return. Bill will not be required to report Pam's earnings from Oregon because as a nonresident living in a non-community property state, Pam's income is separate property. Pam is only required to include her share of the community income from Idaho sources (½ Bill's wages = $10,000) on her nonresident Idaho return.

DOMICILED IN DIFFERENT COMMUNITY PROPERTY STATES

Generally, when one spouse is domiciled in Idaho and the other is domiciled in another community property state, the Idaho resident reports half of the combined community income and the nonresident spouse reports half of the community income from Idaho sources.

Example: Bill is domiciled in Idaho and earned wages of $20,000 during the year. His wife, Pam, is domiciled in Nevada and earned $30,000 in wages. Bill and Pam file a joint federal income tax return. The amount to include on the joint Idaho income tax return is computed as follows:

As an Idaho resident, Bill must include his share of community income from all sources on the joint Idaho return. (½ Bill's wages $10,000 + ½ Pam's wages $15,000 = $25,000)

As a nonresident, Pam is only required to include her share of the community income from Idaho sources on the joint Idaho return. (½ Bill's wages = $10,000)

The total amount of income reported on their joint Idaho return is $35,000 (Bill's half of the community income totaling $25,000 plus Pam's half of the community income from Idaho sources totaling $10,000).

Exceptions

Internal Revenue Code (IRC) Section 66 provides two exceptions when certain community income will be treated as the separate income of a spouse. Because federal "taxable income" is the starting point for computing your Idaho taxable income (see Idaho Code section 63-3011C), the IRC section 66 exceptions are significant if they apply to you.

The IRC section 66(a) exception involves certain scenarios when both spouses lived apart for the entire year and some other very specific conditions existed.

The IRC section 66(c) exception involves certain scenarios when a spouse had no reason to know of an item of community income and a few more qualifying conditions existed.

See the discussion of "Community Property Laws Disregarded" in the Community Property IRS Publication 555 for more information.

Withholding and Estimated Tax Payments

You must file to claim credit for any withholding from various income sources in the same way you reported the income. If the income is community income, half of the income and half of the withholding are reported on each spouse's separate tax return. Separate income and withholding is reported by the spouse who earned the income. Estimated payments made out of community or separate property funds will be credited to the spouse for whom such payment is made.

Community Split Examples

Example 1: In the current year you and your spouse are residents of, and domiciled in, Idaho. You earn $15,000 in wages and your spouse earns $30,000. In addition to wages, you inherit stock. The stock is in your name only, and you keep the stock and dividend income separate from community funds. You receive $5,000 in dividends. Unless a written agreement provides otherwise, dividends received from separate property are community income. You decide to file separate returns. You and your spouse each have $25,000 in community income:

(($15,000 + $30,000+$5,000)/2 = $25,000).

If there is a written agreement that designates the income received from dividends as separate property, then the $5,000 dividend will retain its separate nature. If that is the case, you and your spouse each have $22,500 in community income

(($15,000 + $30,000)/2 = $22,500).

In addition to your $22,500 in community income, you must include the $5,000 of separate income from dividends, making your total income $27,500.

Example 2: In the current year you and your spouse are residents of, and domiciled in, Idaho. You were divorced on July 1. For the first six months you earn $14,000 and your spouse earns $20,000. During the second six months you earn $14,000 and your spouse earns $20,000. For first six months, you each have $17,000 of community income

(($14,000 + $20,000)/2= $17,000).

Your income for the year is $31,000 ($17,000 + $14,000) and your spouse's income is $37,000 ($17,000 + $20,000).

This publication doesn't provide full explanations of Idaho tax laws or rules. For more information, contact:

- (208) 334-7660 in the Boise area or (800) 972-7660 toll free
- Hearing impaired: TDD (800) 377-3529
- **tax.idaho.gov**