

BEFORE THE MONTANA TAX APPEAL BOARD

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TIMOTHY L. BLIXSETH,	)	
	)	Docket No. IT-2011-2
Appellant,	)	
-vs-	)	
	)	ORDER ON DEPARTMENT OF
DEPARTMENT OF REVENUE	)	REVENUE'S MOTION FOR
OF THE STATE OF MONTANA,	)	PARTIAL SUMMARY
	)	JUDGMENT ON COUNT 2 and
Respondent.	)	MOTION FOR SUMMARY
	)	JUDGMENT ON COUNTS 8 & 10

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The Department of Revenue filed a Motion for Partial Summary Judgment on Count 2 and a Motion for Summary Judgment on Counts 8 and 10.

Count 2 of the Department's Audit Report challenges a deduction taken on Mr. Blixseth's tax return for "Non-Montana Gross Income" on the grounds that no such deduction exists in the Montana code. Taxpayer did not deny the merits of this contention, and so conceded the issue. We grant summary judgment on the question of the existence of such a deduction.

Count 8 of the Audit Report requires that Mr. Blixseth, as the sole owner of BGI, Inc., report all the income from that entity under ARM 42.15.322(4). Mr. Blixseth argues he and his wife were California residents at the time and the community property laws of that state require that property belong to both spouses, so that only half the income is attributable to him. We note California property laws do not control Montana tax law, which supercedes community property laws in apportioning income. Indeed, many states and the federal tax law similarly ignore community property laws for purposes of income taxation and tax income to the spouse who owns the asset. We agree with the DOR that Montana law requires all

the BGI income be reported by Mr. Blixseth and grant summary judgment on the issue.

Count 10 of Mr. Blixseth's complaint asserts that the Statute of Limitations bars the DOR notice of deficiency as to tax year 2002. The DOR offered uncontested evidence that the Taxpayer's return was not filed until November 29, 2004, less than five years prior to the deficiency notice. Similar to Count #2, the Taxpayer did not deny that the deficiency notice was timely. We grant the DOR summary judgment on this issue as well.

IT IS THEREFORE ORDERED that Department of Revenue's Motion for Partial Summary Judgment on Count 2 and Motion for Summary Judgment on Counts 8 and 10 is granted.

DATED this 1<sup>st</sup> day of May, 2014.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

(SEAL)

  
KAREN E. POWELL, Chairwoman

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on this 1<sup>st</sup> day of May, 2014, a true and correct copy of the foregoing has been served on the parties hereto by the method indicated below and addressed as follows:

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