SENATE TAXATION
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Montana Department of Revenue

Dan Bucks
Director

Brian Schweitzer
Governor

MEMORANDUM OPINION **REV/LS # 07-01**

TO: **Gene Walborn, Administrator**
Business and Income Tax Division

FROM: **Derek R. Bell, Tax Counsel**
Legal Services Office

DATE: **January 26, 2007**

SUBJECT: **Form 1099-G**

BACKGROUND

John and Jane Doe, husband and wife, file their respective Montana income tax return on a "married filing separately on the same form" basis. According to the return, John owes $1,000 in tax for the year. Conversely, Jane is entitled to a refund of $2,000.

In this circumstance, the Department offsets John's liability against Jane's overpayment and mails out a refund of $1,000. The netting of John's liability against Jane's refund promotes administrative convenience for both taxpayers and the Department.

Following the issuance of a state income tax refund, § 6050E of the Internal Revenue Code requires the Department to submit a Form 1099-G to both the Internal Revenue Service and the affected taxpayer. Form 1099-G reports state income tax refunds paid to the taxpayer to determine if any portion of the state income tax refund is taxable by the federal government. A Form 1099-G is only issued to the taxpayer actually entitled to a refund; the 1099-G does not list the spouse who owed Montana tax.

The Department's past practice would have reported on Jane's Form 1099-G that the amount of the income tax refund was $1,000. Now, the Department reports on Jane's Form 1099-G that the income tax refund was $2,000.

QUESTION PRESENTED

Is the Department required to report the $1,000 or the $2,000 when completing Form 1099-G?

BRIEF ANSWER

In the example given above, the Department reports $2,000 on Form 1099-G.

RELEVANT LAW

Section 6050E(a), I.R.C., states:

> Every person who, with respect to any individual, during any calendar year makes payments of refunds of State or local income taxes (or allows credits or offsets with respect to taxes) aggregating $10 or more shall make a return according to forms or regulations prescribed by the Secretary setting forth the aggregate amount of such payments, credits, or offsets, and the name and address of the individual with respect to whom such payment, credit, or offset was made.

(Emphasis added.)

ANALYSIS

Spouses who file separately on the same form are properly treated as separate, identifiable taxpayers for purposes of the reporting requirements imposed by § 6050E, I.R.C. Indeed, doing so ensures consistency in that married taxpayers filing separately should be treated similarly regardless of whether they file on the same return or on different returns. In any event, if one spouse, who filed as a "separate" taxpayer is entitled to a state income tax refund, that taxpayer's full refund is reportable on his or her Form 1099-G.

The Department's interpretation of § 6050E, I.R.C., is consistent with how other states view their Form 1099-G reporting obligations (see, for example, Missouri, Maine, and Virginia). Indeed, no other contrary opinion or view was discovered.

Equally important, reporting the full refund amount comports with how the Internal Revenue Service views a state's reporting obligation under § 6050E, I.R.C. For example, in *Private Letter Ruling* 8445062, the Service was asked to opine on a similar question involving § 6050E, I.R.C. In that particular case, the state's income tax laws did not permit married taxpayers to file joint returns. Instead, the married couple was required to file "a combined return on which each spouse independently reports his or her income and deductions and independently computes his or her tax. Any tax due by one spouse may be offset by any refund to the other spouse." *Id.*

When analyzing the proper amount for the state to report as the "refund" on Form 1099-G, the Service noted:

(a) Where one spouses' refund for tax year 1983 is applied against the tax owed by the other spouse, the amount of the refund to be reported in Box 2 is the amount of the refund before the reduction for the other spouse's tax due. The gross amount of refund rather than the net amount is reportable.

(b) Where husband and wife file on the same return and each receives a refund, a separate Form 1099-G is required for each spouse showing that spouse's respective refund.

Id.

Finally, the tracing of a state income tax refund to the taxpayer who actually earned it could conceivably result in the same conclusion even with married taxpayers who file jointly. For example, courts have consistently held that a husband and wife who file a joint return do not have a joint interest in an overpayment; each has a separate interest. *Revenue Ruling 74-611*, citing: *Maragon v. United States*, 153 F. Supp. 365 (Ct. Cl. 1957). Further, "[t]he Tax Court has repeatedly held that the filing of a joint return does not have the effect of converting the income of one spouse into the income of the other." *Id.*, citing; *Marie A. Dolan*, 44 T.C. 420 (1965); *Robert A. Coerver*, 36 T.C. 252 (1961). See also, *Rosen v. United States*, 397 F. Supp. 342, 344 (E.D.Pa. 1975) ("a joint income tax return does not create new property interests for a husband or wife in each other's income tax overpayment"), and *Gens v. United States, 615 F.2d 1335, 1342* (Ct. Cl.1980) ("an overpayment is apportionable to a spouse to the extent that he or she contributed to the overpaid tax").