

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15969
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

On September 21, 2001, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1995 in the total amount of \$555.

On September 28, 2001, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather submitted additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold real property in Idaho in 1995. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for the taxable year 1995. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayer letters asking the taxpayer about the sale of the Idaho property and her requirement to file an Idaho income tax return. The taxpayer responded with copies of her Utah and federal income tax returns along with the statement that she included everything on her Utah return. The Bureau reviewed the taxpayer's returns and prepared an Idaho income tax return for the taxpayer. The Bureau then sent the taxpayer a Notice of Deficiency Determination, which the taxpayer appealed.

The Tax Commission sent the taxpayer a letter giving her two options for having the Notice of Deficiency Determination redetermined. The taxpayer chose to submit documentation for the Tax Commission to consider. The taxpayer stated she was a 75-year-old widow. She said she sold her vacation home in Idaho because of her financial situation. The taxpayer stated she only owned the Idaho property for two years and that the rent she received did not cover the mortgage. She stated that she thought she had performed all that was required of her when she sold her house in Pocatello, Idaho.

The Idaho Code is clear in section 63-3026A(3)(ii) that income resulting from the disposition of real property in Idaho is Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The threshold for nonresident individuals for tax year 1995 was \$2,500. Therefore, if the taxpayer realized a gain from the sale of the Idaho property in excess of \$2,500, she was required to file an Idaho income tax return.

On the taxpayer's [Redacted], she reported a gain from the sale of the Idaho property of \$9,490. The Bureau used this figure as the taxpayer's gross income from Idaho sources. Since the taxpayer was a nonresident of Idaho, the Bureau prepared a return for the taxpayer under the guidelines of Idaho Code section 63-3026A. Idaho Code section 63-3026A prorates the taxpayer's personal exemption and standard or itemized deductions in the ratio of Idaho source income to total income. The Bureau used the standard deduction in its determination of the taxpayer's Idaho tax.

The Tax Commission reviewed the return the Bureau prepared and the taxpayer's Utah and federal income tax returns. The Tax Commission found that the taxpayer itemized her deductions on her federal and Utah returns. The Tax Commission found that the taxpayer would

be benefited if her itemized deductions were used on her Idaho return rather than the standard deduction. Therefore, the Tax Commission adjusted the return prepared by the Bureau to reflect the taxpayer's itemized deductions.

The Bureau's return for the taxpayer failed to recognize that the taxpayer was over the age of 65. This would change the Bureau's computation of the taxpayer's tax because taxpayers over the age of 65 get a larger standard deduction. However, since the Tax Commission adjusted the return prepared by the Bureau to reflect the taxpayer's itemized deductions, the taxpayer is already receiving the maximum benefit to which she is entitled.

The taxpayer stated she reported and paid tax on the sale of her Idaho property to the state of Utah. She stated the statute for getting a refund from Utah for the property tax paid is beyond Utah's statute of limitations. The Tax Commission is not clear as to what tax the taxpayer is referring to. On the taxpayer's 1995 Utah income tax return, the taxpayer paid no tax because the taxpayer received an additional retirement exemption for being age 65 or older. That exemption reduced the taxpayer's federal adjusted gross income on her Utah return to zero. Therefore, the taxpayer did not pay any state taxes on the sale of her Idaho property. Regardless, the Idaho Code states that the sale of Idaho property is Idaho source income and that income is reportable to Idaho.

The Bureau added interest and penalty to the taxpayer's Idaho tax deficiency. The Tax Commission reviewed those additions and found the interest was properly added in accordance with Idaho Code section 63-3045 and the Idaho Supreme Court decision in Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983). The Tax Commission also reviewed the penalty and found that the delinquency penalty was properly

added in accordance with Idaho Code section 63-3046. However, in light of extenuating circumstances, the Commission will abate the penalty.

WHEREFORE, the Notice of Deficiency Determination dated September 21, 2001, is hereby MODIFIED, in accordance with the provisions of this decision, and as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$59	\$0	\$30	\$89

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]

ADMINISTRATIVE ASSISTANT 1