

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16280
[Redacted] Petitioners.)	
)	DECISION
)	
)	
)	

On December 5, 2001, The Income Tax Audit Bureau (ITA) of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted](petitioners), proposing additional income tax and interest for the taxable years 1999 and 2000 in the total amount of \$6,540. The petitioners filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

On January 8, 2002, the petitioners filed a protest with the Tax Commission seeking a redetermination of ITA’s treatment of the (1) capital gain on the sale of stock sold in 1999, (2) IRA distribution received by the wife in 1999, and (3) capital gain on the sale of stock in 2000.

In General

The petitioners moved from [Redacted] Washington to Idaho on September 1, 1999.¹ The petitioners filed an Idaho part-year resident income tax return for taxable year 1999 and an Idaho resident income tax return for taxable year 2000.

On the petitioners’ 1999 Idaho income tax return, the petitioners did not treat any of their income for that year as being subject to tax by Idaho. The only item that the petitioners reported as being subject to Idaho taxation was a deduction of \$920 for a portable generator. ITA reviewed the petitioners’ 1999 income tax return and made several adjustments. Of the adjustments made by ITA, the petitioners only disagree with ITA’s treatment of the gain on the sale of stock and the receipt of an IRA distribution.

¹ Per attachment to Petitioners’ letter dated January 8, 2002, page 2.

The petitioners argue that Idaho Code section 63-3026A only requires a prorated portion of the gain from the sale of the stock to be treated as Idaho source income since, according to the petitioners, the statute states “Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho....” (Emphasis added). Therefore, the petitioners argue that only \$3,500 of the \$10,500 should be treated as taxable by Idaho. The petitioners arrived at their figure by prorating the gain based upon the number of months that the petitioners were residents of Idaho.² The petitioners make a similar argument with respect to the receipt by the wife of the IRA distribution and believe that only \$3,333 of the \$10,000 distribution should be taxable by Idaho.³

On the other hand, ITA determined that the entire \$10,500 gain on the sale of stock sold on November 18, 1999, and the entire \$10,000 IRA distribution received by the wife on October 8, 1999, were both subject to Idaho tax since the sale of stock as well as the receipt of the IRA distribution occurred after the petitioners had changed their domicile to Idaho.

On November 11, 1999, the petitioners sold their one-quarter interest in commercial property located in [Redacted] Washington and reported the sale on the installment basis. As a result of the sale, the petitioners reported a capital gain in taxable year 2000 of \$115,500. On the petitioners’ 2000 Idaho income tax return, the petitioners claimed a \$69,300 Idaho capital gain deduction. The petitioners believe that the Washington property should be afforded the same treatment as Idaho property held for 18 months or more and therefore the petitioners should be entitled to claim the Idaho capital gains deduction on the sale of the Washington property. Alternatively, the petitioners argue that Idaho should not tax all of the gain since the property

² \$10,500 times 4 divided by 12 equals \$3,500. See taxpayers’ letters dated June 7, 2002, and January 8, 2002.

³ \$10,000 times 4 divided by 12 equals \$3,333. See taxpayers’ letters dated June 7, 2002, and January 8, 2002.

that was sold was held approximately 31 years and eight months prior to the petitioners changing their domicile to Idaho.

ITA reviewed the petitioners' 2000 Idaho income tax return and made several adjustments of which only ITA's treatment of the gain on the sale of the Washington property is at issue. Since the petitioners were residents of Idaho for taxable year 2000, ITA included all of the gain in the calculation of the petitioners' Idaho taxable income and, since the property sold did not have an Idaho situs at the time of sale, ITA determined that the petitioners were not entitled to claim the Idaho capital gain deduction on the sale of the Washington property.

Law and Analysis for Taxable Year 1999

For taxable year 1999, Idaho Code section 63-3026A states, in pertinent part,

63-3026A. Computing Idaho taxable income of part-year or nonresident individuals, trusts and estates.

(1) . . .

(2) For part-year resident individuals . . . the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. . . .

For purposes of determining what is included in the petitioners' Idaho taxable income for taxable year 1999, the statute first directs the petitioners to include "Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho." In this case, the portion of the tax period during which the petitioners were domiciled in or were residing in Idaho" was September 1, 1999, through December 31, 1999. Therefore, the statute requires that from September 1, 1999, through December 31, 1999, the petitioners include in the calculation of their Idaho taxable income what a resident would include. Idaho imposes a tax on a resident's Idaho taxable income wherever derived. Idaho

Code section 63-3002. Since the \$10,500 gain on the sale of the stock and the \$10,000 taxable distribution from the wife's IRA were received by the petitioners during the period that the petitioners were "domiciled in or were residing in Idaho," Idaho Code section 63-3026A requires that both of these amounts be included in the calculation of petitioners' Idaho taxable income for taxable year 1999 in their entirety. Accordingly, the petitioners are not entitled to the relief they seek.

Law and Analysis for Taxable Year 2000

It is undisputed that the petitioners are Idaho residents for taxable year 2000. Idaho Code section 63-3002 states in pertinent part that:

It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . . to impose a tax on residents of this state measured by Idaho taxable income wherever . . .

"Taxable income" is defined as "federal taxable income as determined under the Internal Revenue Code." I.C. § 63-3011B. The petitioners are not arguing that the \$115,500 gain from the sale of their [Redacted] Washington property in 2000 was not taxable income under the [Redacted] and the petitioners did include such sum as taxable income in their 2000 [Redacted] income tax return. "Idaho taxable income" is defined as "taxable income as modified pursuant to the Idaho adjustments specifically provided in this chapter." I.C. § 63-3011C. The petitioners argue that Idaho's taxation of the entire gain on property that they held for more than 30 years while residents of Washington and less than three months in Idaho is unfair, however the petitioners have not pointed to any provision of the Idaho Income Tax Code that provides for a deduction, pro-ratio or exemption of all or part of the \$115,500 from Idaho taxable income.

Therefore, the \$115,500 capital gain is "Idaho taxable income" under the Idaho Income Tax Code and the petitioners are not entitled to the relief they seek. In the alternative, the petitioners argue that Idaho should allow the Idaho capital gains deduction on the sale of the [Redacted], Washington real property. The petitioners state, "in all fairness, we feel that rejecting the \$69,000 capital gains deduction is adverse to the purpose and intent of the statute 63-3022H." ⁴

Idaho Code section 63-3022H states, in pertinent part,

(1) If an individual taxpayer reports a net capital gain in determining taxable income, sixty percent (60%) of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.

(2) . . .

(3) As used in this section "qualified property" means the following property having an **Idaho situs at the time of sale**:

(a) Real property held at least eighteen (18) months;

Emphasis added.

Idaho Code section 63-3022H(3) clearly requires that "qualified property" have an Idaho situs at the time of sale. Accordingly, the petitioners are not entitled to the Idaho capital gain deduction on the sale of their [Redacted], Washington real property; therefore, the adjustment made in the Notice of Deficiency Determination to disallow the Idaho capital gain deduction is affirmed.

Hardship

The petitioners argue that, given their current medical conditions and possible future health problems, to have to come up with the amount due in the Notice of Deficiency would be an "extreme hardship" on the petitioners. The petitioners are seeking relief in accordance with Idaho Code section 63-3048 which states:

Adjusted or compromised cases -- Closing agreements. (a) The state tax commission or its delegate is authorized to enter into an agreement in writing

⁴ Petitioners' letter dated January 8, 2002, page 2.

with any person relating to the liability of such person, or of the person for whom he is acting, in respect of any tax under this act for any taxable period ending prior to the date of the agreement.

(b) Such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of the state.

(2) In any suit, action, [or] proceeding, such agreement, or any determination, assessment, collection, payment abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

In support of their request, the petitioners have submitted a detailed listing of their income and assets for the Tax Commission's review.

Idaho Administrative and Enforcement Rule 500 identifies the grounds in which the Tax Commission may compromise a taxpayer's tax liability, penalty, or both. Rule 500 states:

500. ADJUSTED OR COMPROMISED CASES -- CLOSING AGREEMENTS (Rule 500).

Sections 63-3047 and 63-3048, Idaho Code.

01. Grounds For Compromise. The Tax Commission may compromise the tax liability, penalties, or both, of a case if one or more of the following circumstances exist:

- a. Doubt as to liability;
- b. Doubt as to collectibility; or
- c. Extreme hardship of the taxpayer.

After considering the taxpayers' reasons for requesting the compromise and after reviewing the financial information submitted by the petitioners, the Tax Commission does not believe that the petitioners are entitled to the relief they seek.

WHEREFORE, the Notice of Deficiency Determination dated December 5, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$ 254	\$ 52	\$ 306
2000	5,872	746	<u>6,618</u>
	TOTAL DUE		<u>\$ 6,924</u>

Interest is calculated through December 31, 2002, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

An explanation of the petitioners' rights 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 on this ____ day of _____, 2002, 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:

[REDACTED]

[Redacted]