

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 16589 |
| [Redacted], |) | |
| |) | DECISION |
| Petitioner. |) | |
| _____ |) | |

On February 1, 2002, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing Idaho individual income tax, penalty, and interest in the amount of \$7,424 for the tax year 1997.

The taxpayer filed a timely protest and petition for redetermination. He did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The Bureau determined the taxpayer sold a piece of Idaho real estate during 1997 but did not file an Idaho income tax return to report the income. The Bureau sent the taxpayer a letter that explained the Idaho income tax filing requirements for a non-resident. The Bureau asked the taxpayer to provide the details of the sale.

When the taxpayer did not respond, a second letter was sent. The taxpayer's wife replied by telephoning the Bureau. In that conversation, on September 19, 2001, the taxpayer's wife said the property they sold in Idaho during 1997 was a home. She said, when they moved from Idaho in 1995, they rented the house out until it sold in 1997. She said she would locate their 1997 federal return and send a copy to the Bureau.

The copy of the taxpayer's 1997 federal income tax return did not arrive and the Bureau sent the taxpayer an additional letter. Again, the taxpayer's wife telephoned. She said her husband

thought the taxes had been taken care of at the time of the property sale. She promised to find a copy of the 1997 federal return and send it to the Bureau.

Idaho Code § 63-3045 describes the process when a deficiency is determined:

63-3045. Notice of redetermination or deficiency -- Interest.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

The copy of the federal return was not received from the taxpayer as promised and a Notice of Deficiency Determination was issued. In the notice, the sales price of the property was treated as income to the taxpayer. The taxpayer's wife sent a letter of protest wherein she asked for a form to send to the Internal Revenue Service to request a copy of their 1997 federal tax return. The Bureau sent a blank federal form 4506 to the taxpayer.

On July 1, 2002, the Bureau received a letter from the [REDACTED] stating that the taxpayer's [Redacted] was not available for copying at that time. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review. The taxpayer did not respond to a letter outlining his right to request a hearing or submit additional information.

Idaho Code § 63-3026A directs the determination of tax on income received by a non-resident of Idaho as follows:

63-3026A. Computing Idaho taxable income of part-year or nonresident individuals, trusts and estates. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates 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. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) **Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:**

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

(ii) **The ownership or disposition of any interest in real or tangible personal property located in this state;**

(Emphasis added.)

The taxpayer does not deny he sold Idaho property in 1997. Clearly, Idaho Code § 63-3026A includes income from the sale of Idaho real estate as Idaho taxable income. Although the taxpayer was given ample opportunity, he has furnished nothing to suggest the sales price was not

entirely Idaho taxable income. The Tax Commission is left with little choice in determining the taxpayer's Idaho income for 1997.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). Having presented no information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

WHEREFORE, the Notice of Deficiency Determination dated February 1, 2002, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for 1997.

| | | | |
|------------|----------------|-----------------|--------------|
| <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
| \$4,776 | \$1,194 | \$1,579 | \$7,549 |

Interest is computed through August 15, 2002.

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]

[Redacted]

ADMINISTRATIVE ASSISTANT 1