

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15401
[Redacted])	
Petitioners.)	DECISION
)	
)	

On December 29, 2000, 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 year 1997 in the total amount of \$1,137. The petitioners filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

The only issue to be resolved is whether or not the petitioners are entitled to claim the Idaho capital gain deduction in 1997 on the sale of Idaho real property which was sold in 1994 on the installment basis.

In 1994, the petitioners reported the sale of an Idaho apartment complex. The sale was reported on the installment basis. On federal form 6252, the petitioners reported that the date of purchase was November 8, 1990, and the date of sale was January 8, 1994. The amount of the gain that the petitioners reported in 1997 as a result of the sale of the property in 1994 on the installment basis was \$18,891. On the petitioners' 1997 Idaho income tax return, the petitioners treated the gain as a gain from the sale of qualified property and claimed the Idaho capital gains deduction. As a result of a desk audit of the petitioners' 1997 Idaho income tax return by the Tax Commission's Income Tax Audit Bureau (Bureau), the Bureau issued a Notice of Deficiency Determination disallowing the Idaho capital gain deduction because the petitioners had not held the property for the required holding period. The petitioners protested the Bureau's findings and stated in their petition for redetermination: "The property in question was received

in an exchange for property originally purchased December 1, 1985.” In February of 2003, the petitioners’ representative indicated that he was trying to find documentation to support their position that the holding period begins in 1985.

Idaho Code section 63-3022H, as in effect for tax year 1994 (the year of the sale), stated in pertinent part:

63-3022H. Deduction of capital gains. (1) If for any taxable year an individual taxpayer has a net capital gain which has not already been deducted from gross income in determining Idaho adjusted income, sixty percent (60%) of the net capital gain (but not more than the net gain reported on the return) shall be a deduction from Idaho adjusted income.

(2) For the purpose of this section capital gains deductions shall be allowed only for property which had an Idaho situs at the time of sale, as follows:

(a) Capital gains from sales of real property which has been held for a minimum of five (5) years; . . .

In order for the gain on the sale of real property to be treated as gain from the sale of “qualified property,” the real property had to have been held a minimum of five (5) years. The only documentation provided to the Tax Commission as of the date of this decision reflects that the date the property was acquired was November 8, 1990, and the date the property was sold was January 8, 1994, a holding period of less than five years. The petitioners have not provided any documentation to support their claim that the property was acquired through a like-kind exchange in 1985.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Comm'n, 110 Idaho 572 (Ct. App. 1986). If a material fact upon which a deduction depends is not proved, the taxpayer, upon whom the burden rests, must bear his or her misfortune. Burnet v. Houston, 283 U.S. 223 (1931).

WHEREFORE, the Notice of Deficiency Determination dated December 29, 2000, 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>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	932	-	358	1,290

Interest is calculated through July 15, 2003, 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 _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, 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]

[Redacted]
