

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16222
[Redacted])	
)	DECISION
Petitioners.)	
)	

On December 7, 2001, the Income Tax Audit Bureau (ITA) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioners), proposing additional income tax and interest for the taxable years 1998 and 1999 in the total amount of \$11,167. The petitioners filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, issues its decision.

The petitioners were Idaho residents during 1998 and 1999. In computing their Idaho taxable income for 1998 and 1999, the petitioners claimed an Idaho capital gain deduction of \$36,548 and \$48,944, respectively. ITA disallowed the capital gain deduction since, according to ITA, the gains were not from qualified property and thus the petitioners were not entitled to claim the deduction. Therefore, the only issue before the Commission is whether or not the petitioners are entitled to claim the Idaho capital gain deduction on property sold in 1998 and 1999.

On page two, Part III - Gain from Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 of Federal Form 4797 (Sales of Business Property) for tax year 1999, the petitioners reported the following sale:

<u>Description</u>	<u>Date Acquired</u>	<u>Date Sold</u>	<u>Sales Price</u>	<u>Cost</u>	<u>Depreciation</u>	<u>Total Gain</u>
US Patent 5,632,715 & CIPs	12/09/1996	12/23/1999	\$81,814	\$240	\$0	\$81,574

On page one, Part I (Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft – Property Held More Than 1 Year) of Federal Form 4797 (Sales of Business Property) for tax year 1998, the petitioners reported the following sales:

<u>Description</u>	<u>Date Acquired</u>	<u>Date Sold</u>	<u>Sales Price</u>	<u>Cost</u>	<u>Depreciation</u>	<u>Total Gain</u>
Invention 1	08/23/93	11/06/98	\$0	\$0	\$0	
Invention 2	12/10/96	11/06/98	\$48,756.28	\$0	\$0	
Invention 3	12/10/96	11/06/98	\$10,854.51	\$0	\$0	
Total Gain						\$60,913.33

When totaled, \$48,756.28 plus \$10,854.51 equals \$59,610.79 not \$60,913.33. It is not clear from the record what caused the \$1,302.54 difference; however, since the petitioners did not, as part of their petition for redetermination, argue that the total gain from these sales was something other than the \$60,913.33, the Commission will assume the \$60,913.33 is the correct figure.

The petitioners claimed the Idaho Code section 63-3022H capital gain deduction on \$81,574 and \$60,913 of gain from the sale of the U. S. patent and inventions resulting in a deduction of \$36,548 and \$48,944 for taxable years 1998 and 1999, respectively. However, when ITA issued its Notice of Deficiency Determination on December 7, 2001, for taxable year 1999, ITA disallowed \$81,574 instead of \$48,944. The Notice of Deficiency Determination will be modified to correctly reflect the proper amount of deduction (i.e. \$48,944) that should have been added back by ITA in arriving at the petitioners' 1999 Idaho taxable income.

Idaho Code section 63-3022H provides for an Idaho capital gain deduction and states, in pertinent part, that

63-3022H. Deduction of capital gains. (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) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. . . .

(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;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;
- (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;
- (d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;
- (e) Timber grown in Idaho and held at least twenty-four (24) months;
- (f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the internal revenue code shall apply, except that when the holding period includes any period during which the taxpayer held property other than the property sold, all property held during the holding period must qualify under this section.

. . .

(7) As used in this section "revenue-producing enterprise" means:

- (a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;
- (b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;
- (c) The feeding of livestock at a feedlot;
- (d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

The petitioners argue that they sold tangible assets and not the patents in 1998 and 1999.

According to the petitioners, in 1993 the petitioners acquired tangible assets (i.e. laboratory designs, prototypes, notebooks, records, column tests, laboratory equipment and full scale tank

reactors) as part of a settlement with a former employer.¹ The petitioners claim that they sold a portion of these assets rather than the patents themselves.² In its letter dated July 9, 2003, the Commission asked the petitioners to provide documentation relating to the assets acquired by the petitioners in 1993 as well as the assets reported as having been sold in 1998 and 1999. As of the date of this decision, the petitioners have not provided the Commission with the requested information.

The petitioners have not provided sufficient documentation to prove that the assets sold in 1998 and 1999 fall within the definition of “qualified property” as defined by Idaho Code section 63-3022H. 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, 227-228 (1931). 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, 574 n.2 (Ct. App. 1986). Therefore, the Commission finds that the petitioners have not met their burden of proof in showing that they are entitled to the deductions they seek.

WHEREFORE, the Notice of Deficiency Determination dated December 7, 2001, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

¹ Petitioners’ petition for redetermination dated December 21, 2001.

² *Id.*

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>
1998	\$2,884	\$ 952	\$3,836
1999	4,013	1,032	<u>5,045</u>
		TOTAL DUE	<u>\$8,881</u>

Interest is calculated through December 31, 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]

Receipt No.
