

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16942
[Redacted]	)	
Petitioners.	)	DECISION
	)	
	)	
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[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated August 14, 2002, asserting additional income tax and interest in the total amounts of \$2,545, and \$2,447 for 1999 and 2000, respectively.

Several adjustments were made by the auditor; and all but one were conceded by the petitioners. The remaining issue is whether the petitioners are due a deduction for insulation placed in their residence during a remodel. The auditor and the petitioners agreed as to the amount in question. The only question is whether the beginning of the construction of the house in question was early enough to qualify for the deduction sought.

The information in the file indicates that it is conceded that the house in question did not exist on November 21, 1975. Other information indicates that the house did exist on January 1, 1977. The information further shows no building permit for the original construction of the house at any time in either 1975 or 1976. The records do show subsequent building permits for remodels of the property.

To qualify for the deduction, the house must have been "in being, under construction, or subject to an outstanding legal building permit on the effective date of this act." Idaho Code § 63-3022B. The effective date of the act was January 1, 1976.

A deed of trust for the property in question indicates that it was purchased by the people who had the house built on November 21, 1975. The deed of trust was not recorded with the

county until February 27, 1976.

A [Redacted] submitted a letter on behalf of the petitioners. It stated, in pertinent part:

[Redacted] [the original owner of the property when the house in question was built] owned or was involved with several businesses dealing with concrete and gravel. In late summer or early fall he began to clear a home site by removing the top soil, cutting down some of the fruit trees in the way of the proposed home. He had his company haul in gravel for the driveway and sidewalks. Soon after the hole for the home was dug and more gravel was hauled in for the house site. [Redacted] knew [Redacted] was going to build a new home and said he had a builder friend in between jobs. The home was constructed in a very short time and they moved in early in 1976.

In reviewing this account, the Commission finds it to be somewhat suspect. The account states there was a period from late summer to early 1976 between the time that the owner began work on the property and the time that the home was occupied. This seems feasible. However, the beginning of this period is suspect. The account indicates that the work began in late summer or early fall. The property wasn't purchased until late November. It seems questionable that work on the property preceded the purchase.

The recording of the deed is also of interest. If the owner had a construction loan to build the house, the failure of the buyer to record the transaction casts some doubt that a lending institution would make such a loan without the recording of the deed in the owner's name.

The United States Supreme Court has stated that, "[w]hether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed . . . [o]bviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms. *New Colonial Ice Co., Inc. v. Commissioner*, 292 U.S. 435, 440 (1934). The adequate presentation of the pertinent facts is the burden assumed by the petitioners in this case. A

decision favorable to the petitioners cannot rest on assumption or speculation. It must rest on facts. *Dispoto v. Commissioner*, T. C. Memo 1990-394; *Wood Corporation of Delaware v. Commissioner*, 22 B.T.A. 1182, 1186 (1931), affd. 63 F.2d 1023 (6th Cir. 1933). The Commission finds that the petitioners have failed to carry their burden in this matter.

WHEREFORE, the Notice of Deficiency Determination dated August 14, 2002 is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that petitioners pay the following tax, penalty, and interest (calculated to May 31, 2003):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$2,136	\$487	\$2,623
2000	2,202	325	<u>2,527</u>
		TOTAL DUE	<u>\$5,150</u>

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

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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]

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