

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17205
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On December 30, 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 and interest in the amount of \$932 for tax year 2000.

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

The taxpayer filed her 2000 Idaho income tax return claiming a refund of \$1,079 for the year. The Bureau's review of that return showed several reporting errors. The taxpayer had claimed a \$38,940 casualty loss on a personal residence by completing a federal Form 4684. However, no Schedule A accompanied the return so the taxpayer did not enter the loss figure on line 19 of Schedule A pursuant to the instructions in the form. Rather, the taxpayer carried the loss figure forward to line 14 of her federal 1040 form, "Other gains or (losses). Attach Form 4797." No form 4797 was attached.

The Bureau wrote the taxpayer a letter wherein she was asked to provide a copy of her Schedule A showing her itemized deductions and her Schedule D to support a capital loss. The Bureau also asked the taxpayer to fully explain the transaction involving the real property located on

[Redacted]. When the Bureau did not receive a response, it issued a Notice of Deficiency Determination denying the loss claimed by the taxpayer in her 2000 income tax return.

The taxpayer responded with a letter explaining the chain of events that led to her claim of loss. She wrote in pertinent part:

In response to the review of my 2000 tax year return my exhusband was living in our former home at [Redacted] in [Redacted], ID while he was supposed to be arranging to buy me out of my equity in the house. He decided not to go through with this and gave the house back to me after the mortgage was so far behind that I was about to lose the house to a foreclosure. I sold the house for just what was owing on it losing my equity but saving the report of a foreclosure.

The taxpayer went on to say she had been contacted by [Redacted] and, with the [Redacted] help, had made the corrections on the proper forms and had received the refund shown in her original return.

The Bureau wrote back to the taxpayer and asked her to furnish a copy of the [Redacted] revised return. No response was received and the taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review. The taxpayer did not respond to a letter outlining her right to request a hearing or submit additional information.

The taxpayer attempted to claim the loss of her equity in the property on [Redacted] by completing a federal Form 4684 showing the loss as a casualty or theft. She did not follow the instruction to carry the final figure forward to Schedule A. Instead she carried the figure forward to the 1040 as "Other gains or (losses)." By entering the full amount resulting from the figures entered in the Casualties and Thefts form, the taxpayer was attempting to take what amounts to a capital loss.

Internal Revenue Code § 165(c)(3) states that an individual's losses on personal transactions are deductible only if they qualify as casualty or theft losses. Thus, no loss deduction is allowed for a loss on the taxpayer's residence unless the loss is from casualty or theft. To claim the loss as a casualty or theft, the property must have suffered physical damage and not just a decline in value. The taxpayer does not explain the casualty or theft except to suggest her ex-husband caused her to lose her equity in their family home.

Internal Revenue Code § 1041 states in pertinent part:

Transfers of property between spouses or incident to divorce.

(a) General rule. No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)-

- (1) a spouse, or
- (2) a former spouse, but only if the transfer is incident to the divorce.

...

(c) Incident to divorce. For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer-

- (1) occurs within 1 year after the date on which the marriage ceases, or
- (2) is related to the cessation of the marriage.

Clearly, the taxpayer is prevented from claiming a loss resulting from the transfer of her and her husband's main home to the husband and then back to the taxpayer. In addition, designation of a loss as a capital loss doesn't make it deductible. An individual can only deduct losses incurred in business, transactions for profit, casualty or theft. Thus, a loss on the sale of a personal residence is a nondeductible capital loss.

The taxpayer did not respond to the Bureau's request for additional information. The burden is on taxpayer to establish the fact that there was a deductible loss in the taxable year in question.

Boehm v Commissioner, (1945) 326 U.S. 287, 90 L. Ed. 78, 66 S. Ct. 120, 45-2 USTC ¶ 9448, 34

AFTR 10, 166 ALR 708, reh. Den. 326 US 811, 90 L. Ed. 495, 66 S. Ct. 468; Scofield v First Nat. Bank, (1946, CA5 Tex) 158 F2d 268, 46-2 USTC ¶ 9412, 35 AFTR 505, cert. Den. 331 U.S. 806, 91 L. Ed. 1827, 67 S. Ct. 1188.

The taxpayer has provided nothing that would suggest the Bureau's determination denying the taxpayer's loss claim was in error. The taxpayer has not carried her burden of proof.

WHEREFORE, the Notice of Deficiency Determination dated December 30, 2002, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest for 2000.

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$820	\$123	\$943

Interest is computed through June 15, 2003.

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 _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

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