

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [Redacted] Petitioner.) DOCKET NO. 17207
)
) DECISION
)
)
 _____)

On December 12, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1998 in the total amount of \$2,784.

On January 31, 2003, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing and has provided only the information sent to the audit staff. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold real property in Idaho in 1998. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for the taxable year 1998.

The Bureau sent the taxpayer letters asking him about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer did not respond. The Bureau reviewed the information available and determined the taxpayer did have a filing requirement with the state of Idaho. The Bureau prepared a return for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination. He stated he purchased two lots when he was in Idaho. He built a house on one, which took over 14 months to sell, and took a loss on the other lot. The taxpayer stated he made approximately \$10,000 on the sale of the two properties.

The Bureau acknowledged the taxpayer's protest and requested additional information from the taxpayer. The taxpayer provided a copy of a page from what appears to be part of the closing documents on the sale of the house. The Bureau reviewed the information and found that it provided little or no information regarding the purchase or sale of the properties. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission sent the taxpayer a letter giving him two methods for having the Notice of Deficiency Determination redetermined. The taxpayer responded that he had no other documentation than what he provided to the Bureau. The Tax Commission sent another letter to the taxpayer asking for his recollection of the purchase and sale of the property. The taxpayer failed to respond. The Tax Commission gathered additional information from [Redacted] the City of [Redacted], and [Redacted] County. Based upon that information and the information the taxpayer provided, the Tax Commission made its decision on the matter.

From the taxpayer's statement, it is apparent that the taxpayer lived in Idaho for a period of time. In January 1998, the taxpayer purchased two subdivision lots in [Redacted], Idaho. In August 1998, the taxpayer sold the unimproved lot, and in November 1998 the taxpayer sold the lot on which he built a house. It is unknown when the taxpayer left Idaho, but the sale of Idaho property is Idaho source income, which could create a filing requirement for the taxpayer.

Idaho Code section 63-3002 states it is the intent of the Idaho legislature to impose a tax, measured by income, on residents of Idaho on their income from whatever source derived; on part-year residents on Idaho source income while nonresidents and on all sources while

residents; and on nonresidents on their Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The taxpayer stated he thought his profit from the sale of the two Idaho properties was approximately \$10,000. This amount exceeds the filing requirement thresholds for individuals. Therefore, the taxpayer did have a requirement to file an Idaho individual income tax return.

The sale of the Idaho property resulted in a capital gain for the taxpayer. Idaho Code section 63-3022H provides for a deduction in the determination of Idaho taxable income of 60% of the capital gain of qualifying property. For real property to qualify the property had to be located in Idaho and the property had to be held for at least 18 months. The property the taxpayer sold meets the first test, located in Idaho; however, the information obtained from the [Redacted] County recorder's office shows the taxpayer did not hold either property for at least 18 months. Consequently, the taxpayer is not entitled to the Idaho capital gains deduction.

The Bureau prepared a return for the taxpayer using the sales price of the unimproved lot as the taxpayer's taxable income. However, this does not account for the taxpayer's basis in the property, and it totally omits the sale of the property on which the taxpayer built the house. The taxpayer stated his profit on the sale of the properties was approximately \$10,000. The information obtained from the recorder's office shows the taxpayer held the unimproved lot for seven months and the lot with the house for almost eleven months. Seeing that the taxpayer did not hold the properties long enough to realize a gain from appreciation or market conditions, the Tax Commission determined the gain, as stated by the taxpayer, was reasonable for the amount of time the taxpayer held the properties. Therefore, the Tax Commission modified the return the Bureau prepared reducing the taxpayer's total gain on the sale of the properties to \$10,000.

The Bureau added interest and penalty to the taxpayer's Idaho tax. The Tax Commission reviewed those additions and found them to be appropriate and in conformity with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated December 12, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 460	\$ 115	\$ 180	\$ 755

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 included with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]

Receipt No.
