

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 17255
[Redacted]	)	
Petitioner.	)	DECISION
	)	
_____	)	

On January 16, 2003, 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 \$5,566.

On April 2, 2003, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. 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. 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. 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 sent the taxpayer a letter 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 determined the taxpayer was required to file an Idaho income tax return, so it prepared a return for the taxpayer and sent him a Notice of Deficiency Determination. The taxpayer appealed the Bureau's determination by sending the Bureau a copy of a warranty deed. The Bureau requested additional information from the taxpayer in order to perfect his appeal and the taxpayer provided a

quitclaim deed and a statement that no money was exchanged in the transaction. The properties were simply put into a trust.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer failed to respond. The Tax Commission sent a follow-up letter to the taxpayer but still received no response from the taxpayer. Therefore, the Tax Commission decided the matter based upon the information available to the Tax Commission.

The Tax Commission received a federal form 1099 filed by [Redacted] showing that the taxpayer sold Idaho property at a sales price of \$54,000. Idaho Code section 63-3026A(3)(ii) states that real property sold in Idaho is Idaho source income. Idaho Code section 63-3030(a)(2) states that every nonresident individual having gross income from Idaho sources in excess of \$2,500 is required to file an Idaho individual income tax return.

The taxpayer resided in [Redacted] at the time of the property sale; therefore, the taxpayer was a nonresident of Idaho in 1998. The property was located in Idaho, and it sold for \$54,000, well in excess of Idaho's filing requirement for nonresident individuals. Therefore, it is apparent from the available information that the taxpayer was required to file a nonresident Idaho income tax return.

The taxpayer stated no money was exchanged in the sales transaction and that the property was put into a trust. The taxpayer also provided copies of a warranty deed and a quitclaim deed.

The warranty deed the taxpayer provided was dated August 19, 1998 and recorded on August 28, 1998. The warranty deed identified three lots in the [Redacted] in [Redacted] County Idaho. The quitclaim deed the taxpayer provided was dated September 23, 1998 and recorded on

December 14, 1998. The quitclaim deed identified only one of three lots identified in the warranty deed recorded on August 28, 1998. Both the warranty deed and the quitclaim deed granted or conveyed the property to [Redacted].

In the execution of a warranty deed or a quitclaim deed, the grantor or conveyor grants or conveys property for value received. The Tax Commission can only assume, from the information available, that the value the taxpayer received was the amount reported by third party, [Redacted], of \$54,000. The taxpayer failed to provide anything to support his statement that there was nothing exchanged in the transaction. He did not meet his burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). Therefore, the Tax Commission upholds the Bureau's determination that the taxpayer was required to file an Idaho income tax return.

The return the Bureau prepared for the taxpayer reported the taxpayer as a single individual with one exemption and income of \$54,000. The Tax Commission obtained additional information from the Internal Revenue Service that showed the taxpayer filed his federal income tax return as married filing joint with three exemptions. The federal information also showed the taxpayer reported wages and self-employment income. From this information, the Tax Commission determined the return the Bureau prepared should be modified. Therefore, the Tax Commission changed the return to reflect a married filing joint filing status (Idaho Code section 63-3031(c)), added two exemptions, and reduced the income to the amount believed to be the gain on the sale of the Idaho properties.

WHEREFORE, the Notice of Deficiency Determination dated January 16, 2003, 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	\$2,139	\$ 535	\$ 781	\$3,455

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

An explanation of the taxpayer's rights to appeal this decision is enclosed 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]

Receipt No.  
\_\_\_\_\_