

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17390
[Redacted])	
Petitioners.)	DECISION
)	
_____)	

On March 20, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax and interest for the taxable year 2000 in the total amount of \$604.

On May 22, 2003, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided no additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers filed their 2000 Idaho individual income tax return claiming a deduction for Idaho capital gains. The Income Tax Audit Bureau (Bureau) reviewed the taxpayers' return to verify the Idaho capital gains deduction. The Bureau found that the taxpayers deducted the entire gain on the sale of property located in Oregon. The Bureau adjusted the taxpayers' return with the explanation that the property was not qualified property; it did not meet the criteria of Idaho Code section 63-3022H.

The Bureau sent the taxpayers a Notice of Deficiency Determination, which the taxpayers protested. The taxpayers stated that Idaho had no right to tax the property because it was located outside the state and outside Idaho's jurisdiction to tax. The taxpayers also stated the property generated losses each year after they moved back to Idaho and those losses were not claimed on their Idaho returns. The taxpayers believe that since the State of Idaho made no attempt to give

them additional refunds for the generated losses, it is inconsistent that Idaho should participate in the gain.

The Tax Commission sent the taxpayers a letter giving them two methods for having the Notice of Deficiency Determination redetermined. The taxpayers did not respond. The Tax Commission sent a follow-up letter to the taxpayers, but still they failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

Idaho Code section 63-3022H stated,

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.

Subpart (3) of Idaho Code section 63-3022H defined qualified property as property having Idaho situs as well as identifying the types of property and the holding periods for the property. The property the taxpayers sold was located in [Redacted]; it did not have Idaho situs. Therefore, the property did not meet the criteria for being qualified property, and the Idaho capital gains deduction is not available on the sale of the property.

The taxpayers argued that since the property was located in Oregon, Idaho had no right or jurisdiction to tax the gain on the sale. However, the taxpayers were Idaho residents and domiciled in Idaho at the time of the sale. Idaho Code section 63-3002 states that it is the intent of the Idaho legislature for the Idaho Income Tax Act to impose a tax on residents of this state measured by Idaho taxable income wherever derived. In Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221 (1920), the U. S. Supreme Court stated,

In our system of government the states have general dominion, and, saving as restricted by particular provisions of the federal Constitution, complete dominion over all persons, property, and business transaction within their borders; they assume and perform the duty of preserving and protecting all such persons, property,

and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses.

The rights of the several states to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of this court. In *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579, while denying their power to impose a tax upon any of the operations of the federal government, Mr. Chief Justice Marshall, speaking for the court, conceded (4 Wheat. 428, 429, 4 L. Ed. 579) that the states have full power to tax their own people and their own property, and also that the power is not confined to the people and property of a state, but may be exercised upon every object brought within its jurisdiction, saying:

'It is obvious, that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation,' etc.

In *Michigan Central Railroad v. Powers*, 201 U. S. 245, 292, 293, 26 Sup. Ct. 459, 462 (50 L. Ed. 744), the court, by Mr. Justice Brewer, said:

'We have had frequent occasion to consider questions of state taxation in the light of the federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over state taxation, and in respect to the latter the state has, speaking generally, the freedom of a sovereign both as to objects *52 and methods.'

That a state may tax callings and occupations as well as persons and property has long been recognized.

'The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. * * * It [taxation] may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.' *State Tax on Foreign-Held Bonds*, 15 Wall. 300, 319, (21 L. Ed. 179).

In *Cohn v. Graves*, 300 U.S. 308, 57 S.Ct. 466 (1937), the U.S. Supreme Court stated,

It would be pressing the protection which the due process clause throws around the taxpayer too far to say that because a state is prohibited from taxing land which it neither protects nor controls, it is likewise prohibited from taxing the receipt and command of

income from the land by its resident, who is subject to its control and enjoys the benefits of its laws.

Here the subject of the tax is the receipt of income by a resident of the taxing state, and is within its taxing power, even though derived from property beyond its reach.

Therefore, as long as the taxpayers are residents or domiciled in Idaho, the State has the jurisdiction to tax the taxpayers measured by their income wherever derived.

The taxpayers stated they received no benefit from the losses sustained on the property since they moved back to Idaho. As previously stated, Idaho imposes a tax on residents measured by their Idaho taxable income. Idaho taxable income is determined by reference to the Internal Revenue Code, subject to modifications contained in the Idaho Code. Therefore, if properly filed, the taxpayers' Idaho income tax returns should have included the losses on the property in the year of the loss or the year of the sale. Since the taxpayers provided nothing to show the losses were not included or even allowable, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated March 20, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$526	\$100	\$626

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

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

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

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