

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17455
[Redacted])	
)	DECISION
Petitioners.)	
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[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditors for the Idaho State Tax Commission (Commission) dated June 18, 2003. The Notice of Deficiency Determination asserted an additional liability of \$1,474 for 2000.

During the year here in question, the petitioners were nonresidents of the state of Idaho. During that year, they held an interest in an S corporation transacting business in the state of Idaho. The S corporation was dissolved in 2000.

The petitioners did not report the income and deductions from the S corporation on their Idaho income tax return. The auditor adjusted the petitioners' Idaho taxable income to include the income attributed to Idaho from an S corporation in which the petitioners owned an interest.

The petitioners raised only one issue. They claim to have incurred a loss on the liquidation of the S Corporation which they would like included in the computation of their Idaho taxable income.

The Idaho capital loss claimed was apparently from the disposition of their stock in the S corporation in 2000. The corporation, the stock of which was sold, was operating in Idaho.

Stock is an intangible. U.S. v. Anderson, 532 F.2d 1218, 1221 (CA9, 1976). Generally, the income or loss from the sale of intangible assets by an individual taxpayer is deemed to have its source in the state of the individual's domicile.

Idaho Code Section 63-3026A stated, in part (1996):

Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

* * *

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

The petitioners contend that the loss from the disposition of the stock had a source in the state of Idaho and that, therefore, the loss should be reflected as Idaho source income in the computation of Idaho taxable income. They contend that Administrative Rule 260.02.a provides the authority for the inclusion of the loss as Idaho source income. IDAPA 35.01.01.260.02.

Income Tax Administrative Rule (1997) states in pertinent part:

02. Income From Intangible Property. Generally, gross income from intangible property is sourced to the state of the owner's domicile. There are three (3) exceptions to this rule.

a. If the intangible property is utilized in connection with the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (Underlining added.)

The petitioners contend that they were required to be a co-borrower with the corporation thereby guaranteeing the operating loan for the corporation. The petitioners contend that, since

their general credit was liable for the debt, the stock was essentially pledged as security for the operating loan for the corporation and, therefore, falls within the bounds of Rule 260. Therefore, the petitioners contend, the loss is from an Idaho source.

The Commission finds two problems in the reasoning of the petitioners. First, the general credit of the petitioners is not synonymous with the pledging of a specific security. The Commission finds that the specific securities here in question were not involved in any meaningful fashion in a business in Idaho. Secondly, gain or loss from the disposition of an intangible may be, according to Rule 260, considered to be from an Idaho source if it is pledged as security for the payment of indebtedness incurred in connection with *the nonresident's Idaho business operations*. The nonresident and the corporation are two separate and distinct legal entities. Swope v. Swope, 112 Idaho 974, 981; 793 P.2d 273, 280 (1987). Even if it were to be found that the stock was pledged for the payment of the indebtedness of the corporation, it would not have been the business operation of the petitioners.

WHEREFORE, the Notice of Deficiency Determination dated June 18, 2003, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$1,272	\$ 241	\$1,513

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

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]
[REDACTED]

Receipt No.
