

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17881
[REDACTED])	
Petitioners.)	DECISION
)	
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the Idaho State Tax Commission (Commission) dated December 31, 2003 asserting additional income tax and interest in the amount of \$227 for 2000.

The petitioners were nonresidents of Idaho during 2000. The petitioners held interests in pass-through entities that transacted business in Idaho. The petitioners claimed an Idaho capital gains deduction but did not provide documentation to establish that the gain in question was from the disposition of qualifying property. Therefore, the auditor disallowed the deduction.

Idaho Code § 63-3022H provided the authority for the Idaho capital gains deduction. It stated:

Deduction of capital gains. (1) 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.

(2) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. Net capital gains treated as ordinary income by the internal revenue code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) As used in this section "qualified property" means the following property having an Idaho situs at the time of sale:

- (a) Real property held at least eighteen (18) months;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;
- (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half

(1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;

(d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;

(e) Timber grown in Idaho and held at least twenty-four (24) months;

(f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the internal revenue code shall apply, except that when the holding period includes any period during which the taxpayer held property other than the property sold, all property held during the holding period must qualify under this section.

(4) If an individual reports a capital gain from qualified property from an S corporation or a partnership, a deduction shall be allowed under this section only to the extent the individual held his interest in the income of the S corporation or the partnership for the time required by subsection (3) of this section for the property sold.

(5) If an individual reports a capital gain from an estate, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the decedent, the estate, or the beneficiary, or a combination thereof.

(6) If an individual reports a capital gain from a trust, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the grantor, the trust, or the beneficiary, or a combination thereof.

(7) As used in this section "revenue-producing enterprise" means:

(a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;

(b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;

(c) The feeding of livestock at a feedlot;

(d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

The burden of proof is upon the taxpayers to show that they are entitled to a deduction. In New Colonial Ice Company, Inc. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 790 (1934), the U.S. Supreme Court stated that "[w]hether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefore can any particular deduction be

allowed." The Court further stated that "[o]bviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms."

The petitioners did not provide further documentation during the administrative appeal. The Commission finds that the petitioners have failed to carry their burden of proof. Therefore, the deficiency must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated December 31, 2003 is hereby APPROVED, AFFIRMED, and MADE FINAL.

The petitioners have paid the deficiency in full and, therefore, no further demand for payment is made.

An explanation of the petitioners' right 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]
