

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 18148
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On April 30, 2004, 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 years 2001 and 2002 in the total amount of \$2,042.

On June 21, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a hearing, which was held on August 24, 2004. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2001 and 2002 nonresident Idaho income tax returns reporting the gain on the installment sale of Idaho property. The Income Tax Audit Bureau (Bureau) reviewed the taxpayers' returns and determined that, since the taxpayers reported a net capital loss on their federal returns, they were not entitled to the Idaho capital gains deduction claimed on their Idaho returns. The Bureau corrected the taxpayers' returns and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that they followed Idaho Code section 63-3022H when they deducted 60% of their capital gain included in their taxable income. They stated the deduction did not exceed their Idaho taxable income or the income from such property as stated in Income Tax Administrative Rule 170.01. The taxpayers acknowledged Administrative Rule 170.04(a) that states the

capital gains deduction is allowed only if capital gain net income is reported on the federal income tax return. However, the taxpayers stated that the rule is geared more to residents because residents start with federal adjusted gross income, whereas nonresidents do not reference the federal return but instead report Idaho source income to Idaho. The taxpayers stated it appears the intent of the statute is to allow a similar deduction to what the Internal Revenue Code previously allowed but to limit the deduction so that an additional deduction over and above the gain reported would not be created. The taxpayers stated the disallowance does not appear to be equitable or represent the intent of the law.

Idaho Code section 63-3022H stated, in pertinent part,

(1) If an individual taxpayer reports a net capital gain in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income. (2001)

(1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income. (2002)

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in federal taxable income. 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. (2001 and 2002)

The Bureau adjusted the taxpayers' 2001 and 2002 returns because their federal returns reported net capital losses. The taxpayers' Idaho income tax returns reported

capital gains of \$43,650 and \$7,199, respectively. The taxpayers then claimed the 80% capital gains deduction for 2001 and the 60% capital gains deduction for 2002. The Bureau adjusted the taxpayers' returns because the deduction is limited to the amount of the capital gain net income from all property included in taxable income. The taxpayers had no capital gain net income.

Idaho Code section 63-3022H states that, if an individual has reported in taxable income a net capital gain (capital gain net income for 2002), 80% (for tax year 2001) or 60% (for taxable years after 2001) of the net capital gain (capital gain net income for 2002) from the sale of qualifying property shall be a deduction in determining taxable income. Taxable income is defined in Idaho Code section 63-3011B as federal taxable income as determined under the Internal Revenue Code (IRC). IRC section 1222(11) defines net capital gain as the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year. IRC section 1222(9) defines capital gain net income as the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

The taxpayers' federal returns reported a net capital loss for both years. Their short-term capital losses exceeded short-term gains and net long-term capital gains. Therefore, the taxpayers had neither a net capital gain nor capital gain net income in 2001 and 2002.

The Idaho Code allows a capital gain deduction if a net capital gain (capital gain net income for 2002) is included in taxable income. (Idaho Code section 63-3022H(1).) The taxpayers had a net capital loss used in determining taxable income. Therefore, the Idaho capital gains deduction is not available to them. Furthermore, the Idaho Code

limits the amount of the capital gains deduction in subsection (2) of section 63-3022H to the amount of capital gain net income from all property included in federal taxable income. The taxpayers did not have capital gain net income in either year. Therefore, according to Idaho Code section 63-3022H(2), the taxpayers' capital gains deduction is limited to zero.

The taxpayers argued that the Bureau's adjustment is not equitable and does not reflect the intent of the law. The Tax Commission's primary function is to enforce the law as written. Any perceived inequity in the law is something that needs to be taken up by the Idaho legislature. In this case, the Tax Commission does not find any ambiguity in Idaho Code section 63-3022H and therefore must follow the law and must uphold the determination of the Bureau.

WHEREFORE, the Notice of Deficiency Determination dated April 30, 2004, 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>
2001	\$1,622	\$272	\$ 1,894
2002	194	20	<u>214</u>
		TOTAL DUE	<u>\$2,108</u>

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

An explanation of the taxpayers' 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.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

\_\_\_\_\_