

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16663 & 17370
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On April 12, 2002 and April 11, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued Notices of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax and interest for the taxable years 1998 and 1999 in the total amount of \$8,346 and \$3,434, respectively.

The taxpayers filed timely appeals and petitions for redetermination. The taxpayers requested a meeting with the Tax Commission to provide additional information for the Tax Commission to consider. Several meetings and appointments were scheduled; however, the taxpayers failed to appear at any of the scheduled times. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) selected the taxpayers' 1998 and 1999 Idaho income tax returns for examination. The Bureau reviewed the records the taxpayers provided and made adjustments to each of the taxpayers' returns. The Bureau's adjustments resulted mostly from the lack of documentation to substantiate the deductions claimed on their schedules A, C, and E. The Bureau also disallowed the Idaho capital gains deduction claimed on the 1998 return because the taxpayers reported a capital loss on their 1998 federal return.

The Bureau sent the taxpayers a Notice of Deficiency Determination for each year. The taxpayers protested the Bureau's adjustments requesting additional time to provide additional information in support of the claimed deductions. The taxpayers did provide additional

information which the Bureau reviewed. The Bureau subsequently modified its 1998 original audit report. However, the taxpayers still disagreed with the Bureau's findings, so the matter was referred for administrative review.

The Tax Commission sent the taxpayers a letter giving them two alternative methods for having the Notices of Deficiency Determination redetermined. The taxpayers responded that they would like to meet with the Tax Commission to provide additional information. The Tax Commission scheduled several meetings to meet with the taxpayers in October, November, and December of 2004. For all of those meetings, the taxpayers either called to reschedule or failed to appear for the meeting. The Tax Commission gave the taxpayers one last opportunity to provide their documentation. A date was set by the taxpayers to bring their documents to the Tax Commission's Boise office. That date came and went and the taxpayers provided nothing. Seeing that the taxpayers had ample opportunity to provide whatever information they wanted the Tax Commission to consider, the Tax Commission made its determination on the matter based upon the information available.

The Bureau disallowed the Idaho capital gains deduction claimed on the taxpayers' 1998 return. The deduction was disallowed because the taxpayers reported a capital loss on their 1998 federal income tax return. Idaho Code section 63-3022H stated in pertinent part,

(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.

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. The taxpayers' federal return reported a net long-term capital loss. Their long-term capital losses exceeded their long-term capital gains. Therefore, the taxpayers had no net capital gain included in taxable income.

The Idaho Code allows a capital gain deduction if a net capital gain 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 net capital gain from all property included in federal taxable income. The taxpayers did not have a net capital gain. Therefore, the Tax Commission upholds this adjustment to the taxpayers' 1998 return.

The remainder of the adjustments the Bureau made to the taxpayers' 1998 and 1999 returns were made because the taxpayers did not provide documentation or substantiation for the deductions claimed. Deductions are a matter of legislative grace and the taxpayer bears the burden of showing that each deduction is allowable by statute. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 54 S.Ct. 788 (1934); Higgins v. C.I.R., T.C. Memo. 1984-330, (1984). The taxpayers did not provide any further documentation or support for their deductions after what was provided to the Bureau. They have not met their burden of record keeping or showing that the deductions were permitted. Therefore, absent any information to substantiate the deductions disallowed by the Bureau, the Tax Commission must uphold the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated April 12, 2002, is hereby MODIFIED, in accordance with the Bureau's updated changes and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

WHEREFORE, the Notice of Deficiency Determination dated April 11, 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>
1998	\$3,697	\$1,561	\$5,258
1999	2,792	976	<u>3,768</u>
		TOTAL DUE	<u>\$9,026</u>

DEMAND for immediate payment of the forgoing 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 _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, 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]
