

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

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

[Redacted](petitioners) protest the Notices of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated March 21, 2003, and November 2, 2004. The first Notice of Deficiency Determination asserted additional Idaho income tax and interest in the total amounts of \$5,511, \$4,511, and \$3,639 for 1998, 1999, and 2000, respectively. The second notice of deficiency determination asserted additional tax and interest for 1998.

The issues involved in this matter are as follows:

1. The proper amount of capital gain reportable from [Redacted] Partnership for 1999;
2. The proper amount of capital gain to be reported from the sale of Albertsons' stock in 2000;
3. The proper amount of the deductible Idaho capital gains deduction for 1999;
4. The proper amount of rental income to be reported in 2000;
5. The proper amount of taxes deductible as itemized deductions in each of the years here in question;
6. The proper amount of interest expense deductible as itemized deductions in 1998; and

7. Whether the loss from the rental of real estate in [Redacted] should be disallowed pursuant to Internal Revenue Code Section 183.

ISSUE 1

The petitioners are claiming that they are entitled to deduct in 1999 passive activity losses in the amount of \$120,803, which they deducted as a capital loss. The accountant for the petitioners contends that a parcel of real property located at [Redacted] in Boise, Idaho was distributed to the petitioners from a partnership in which they held an interest. According to the accountant for the petitioners, “. . . the [Redacted] . . . began March 1, 1983. However, the partnership name . . . before 1995 was [Redacted]” Apparently, the petitioners contend that the property was distributed from one of these partnerships to the petitioners. The petitioners’ contention is that, since this was not a taxable transaction, the [alleged] previously nondeductible passive activity losses flowed to the petitioners along with the real property. The petitioners contend that they exchanged this property pursuant to Internal Revenue Code § 1031 obtaining in the exchange real property located in [Redacted]. When they sold the Colorado property in 1999, they contend that the previously [alleged] nondeductible losses were then deductible.

There are a number of problems with the petitioners’ argument that they are entitled to the claimed losses:

1. The petitioners have not shown that there were any such losses available from any of the entities herein discussed.
2. The petitioners have not established that the property at [Redacted] was held for use in a trade or business or for investment in any passive activity by the

partnership which could have been the source of the claimed passive activity losses.

3. The petitioners have failed to show that they owned all of the property purportedly given up in the purported exchange. It appears from information in the file that they held only a 45% interest (directly or indirectly) in the property.
4. The petitioners have not shown that the [Redacted] property was distributed to the petitioners in the termination of a passive activity.
5. The petitioners have not established that the property in [Redacted] was used in a trade or business or that it was held for investment.

In support of the existence of the losses, the accountant for the petitioners has submitted a copy of his schedule. Copies of the returns were sought but were not supplied. The accountant indicated that they did not keep returns for such old years. Therefore, the Commission cannot make a determination that such losses existed and further finds that the petitioners have failed to carry their burden in this respect. Tax returns alone do not establish that a taxpayer is entitled to carryforwards. See Wilkinson v. Commissioner, 71 T.C. 633, 639 (1979); Roberts v. Commissioner, 62 T.C. 834, 837, 839 (1974). Petitioners offered no other evidence about their carryforwards. We conclude that petitioners may not claim these alleged losses. This being the case, the Commission needn't consider the other facts that should have been established by the petitioners. The auditor's position with regard to this loss deduction is sustained.

ISSUE 2

The petitioners sold Albertsons' stock at a loss. The auditor adjusted the basis of the stock, thereby decreasing the loss from the disposition of the stock. This issue has been conceded by the petitioners.

ISSUE 3

The auditor increased the amount of the Idaho capital gains deduction due largely to the removal of the deduction of the alleged passive activity losses which were removed from the capital gains reported. The petitioners have raised no specific objection to the auditor's computation of this adjustment. The auditor's computation of this amount appears to be correct.

ISSUE 4

The auditor made adjustments to the rental expenses claimed by the petitioners for their rental of a four plex. The adjustments are to interest expense, travel, management fees, and the disallowance of the cost of a lawn mower. The petitioners did not object to these adjustments. Therefore, the auditor's adjustments are affirmed.

ISSUES 5 & 6

The auditor also adjusted the amounts of interest and taxes deducted on the petitioners' returns. These adjustments were also not disputed. Therefore, these adjustments are affirmed.

ISSUE 7

The last issue in this matter is whether the rental loss claimed for the rental of certain real property in [Redacted] should be disallowed pursuant to Internal Revenue Code § 183. The property was purchased pursuant to a purported like-kind exchange (addressed above). The property was purchased for the use of the petitioners' daughter, [Redacted]. In a letter submitted on behalf of the petitioners dated August 5, 1995, an agent of the petitioners stated, in part:

Dear [Redacted]:

Enclosed is an offer to purchase the property at [Redacted]. My clients, [Redacted], plan to make this transaction part of a 1031 Tax Exchange which explains the "and / or assigns" language in the contract.

Their daughter, [Redacted], will be moving from her apartment the end of August which is why we requested such a quick closing date. If there are any problems with this time frame please let me know.

The petitioners reported that they sold the subject [Redacted] property on May 11, 1998. They reported that they had received rental income in the amount of \$2,625 during 1998. The petitioners claimed total expenses of \$23,754 for the property. They also claimed an additional loss in the amount of \$32,838 with regard to the property. They claimed auto and travel expense in the amount of \$4,010 with regard to the rental. Also included in the deducted expenses were management fees which they paid their daughter in the amount of \$6,000 to manage the property. The auditor disallowed the entire loss claimed for this property for 1998.

Internal Revenue Code § 280A stated, in part:

DISALLOWANCE OF CERTAIN EXPENSES IN CONNECTION WITH BUSINESS USE OF HOME, RENTAL OF VACATION HOMES, ETC.

(a) General Rule. – Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.

* * *

(d) Use as a Residence. –

(1) In General. – For purposes of this section, a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of –

(A) 14 days, or

(B) 10 percent of the number of days during such year for which such unit is rented at a fair rental.

For purposes of subparagraph (B), a unit shall not be treated as rented at a fair rental for any day for which it is used for personal purposes.

(2) Personal Use of Unit. – For purposes of this section, the taxpayer shall be deemed to have used a dwelling unit for personal purposes for a day if, for any part of such day, the unit is used –

(A) for personal purposes by the taxpayer or any other person who has an interest in such unit, or by any member of the family (as defined in section 267(c)(4) of the taxpayer or such other person;

Internal Revenue Code § 267(c)(4) stated, in part:

The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

The Tax Court ruled on a case with similar characteristics in Gilchrist v. Commissioner, T. C. Memo 1983-288. Mr. and Mrs. Gilchrist purchased a house in [Redacted] for \$95,000. The court stated that the house had a fair rental value of approximately \$500 to \$750 per month at that time. The Gilchrists rented the property to their daughter and her husband most of the taxable year at issue for \$225 per month and paid her a management fee in the same amount for ten months of the year. For the remainder of the year, they rented the property to a nephew for \$225 per month. The court found that the property was used as a “residence” pursuant to Internal Revenue Code §280A. Accordingly, the loss claimed was disallowed.

In the present case, the petitioners paid their daughter management fees in excess of twice the reported rent. The Commission finds that there has been no credible argument presented that such rental represents fair rental value. Accordingly, the claimed loss is denied with the exception of those expenses deductible as itemized deductions.

WHEREFORE, the Notices of Deficiency Determination dated March 21, 2003, and November 2, 2004, are hereby APPROVED, AFFIRMED, and MADE FINAL.

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 envelopes addressed to:

[Redacted]
[Redacted]

[Redacted]ceipt No.
