

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17956
[Redacted] [Redacted],,)	
)	DECISION
Petitioner.)	
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On September 17, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional income tax and interest for the taxable year 1999 in the total amount of \$2,556.

On October 21, 2003, the taxpayer's representative filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather submitted additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information on the sale of property located in Idaho. During its research of the sale, the Bureau found that the taxpayer reported the sale at a loss on her 1999 Idaho individual income tax return. The Bureau contacted the taxpayer and asked her to substantiate her basis in the property as shown on her Idaho return. The taxpayer did not respond, so the Bureau computed the taxpayer's basis based upon the information available and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination and provided the method used for computing her loss on the sale of the property. The Bureau reviewed the taxpayer's method, acknowledged her protest, and requested a copy of the document the taxpayer said was included with her protest letter but was omitted. The taxpayer did not respond to the Bureau's request, so the matter was referred for administrative review.

The Tax Commission sent the taxpayer a letter giving her two options for having the Notice of Deficiency Determination redetermined. The taxpayer failed to respond, so the Tax Commission sent a follow-up letter. The taxpayer's representative responded with a letter showing her calculations and copies of the closing statement of the sale of the property and federal form 706. The Tax Commission reviewed the information and determined the taxpayer's adjusted basis in the property was incorrect. The Tax Commission had further discussions with the taxpayer's representative to get the correct adjusted basis, but the representative was unable to get the necessary documentation to substantiate the taxpayer's basis. Therefore, the Tax Commission issues this decision based upon the following information.

The taxpayer is a nonresident of Idaho. In 1996, the taxpayer and her husband purchased two subdivided lots in [Redacted], Idaho. In 1998, the taxpayer's husband died, and the property was divided between the taxpayer and the husband's estate. In 1999, the property was sold and the proceeds were split between the taxpayer and the husband's estate. On the taxpayer's 1999 return she reported a loss on the sale of the property. The estate return filed for the husband reported the taxpayer's one-half community interest in the property at \$226,894. The selling price of the property was \$1.2 million.

The Idaho Code is clear in section 63-3026A(3)(ii) that income resulting from the disposition of real property in Idaho is Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The threshold for nonresident individuals for tax year 1999 was \$2,500. Therefore, if the taxpayer realized a gain from the sale of the Idaho property in excess of \$2,500, she was required to file an Idaho income tax return.

The taxpayer and her husband apparently acquired the Idaho property as a qualified joint interest. Therefore, the taxpayer's basis in the property is the cost of her half of the property with certain adjustments. However, the basis the taxpayer used on her Idaho return was a calculation using a partial stepped-up basis due to the death of her husband.

The taxpayer was unable to document the purchase price of the Idaho property, so the Tax Commission went to the County Assessor to get the assessed value of the property at the time the taxpayer purchased the property. The taxpayer reported purchasing the property in January 1996. The Assessor's Office had assessed values for the property in November 1995 for Lot 21 and January 1996 for Lot 22. The Tax Commission determined these values to be close to what the taxpayer actually paid for the property. These values were used to calculate the taxpayer's basis and interest in the property. The Tax Commission computed the taxpayer's gain on the sale of the property using the taxpayer's one-half interest in the assessed value of the property and her one-half share of the selling costs of the property. In the taxpayer's computation she included her share of the property taxes paid at the closing of the property. The Tax Commission did not include those property taxes in its calculation because the taxpayer claimed the same property taxes as an itemized deduction. The net result is that the taxpayer realized a gain on the sale of \$140,160.

Idaho Code section 63-3022H provides for a deduction of capital gains. It states that if an individual reports capital gain net income in determining taxable income, 60% of the capital gain net income from the sale of qualified property shall be a deduction in determining Idaho taxable income. The property the taxpayer sold was qualified property for the Idaho capital gains deduction. Therefore, the Tax Commission deducted 60% of the gain on the sale of the property from the taxpayer's taxable income.

The Tax Commission added interest to the taxpayer's Idaho tax liability in accordance with Idaho Code section 63-3045. However, since the taxpayer paid the Notice of Deficiency Determination, the interest assessed is only for the interest that accrued from the due date of the return to the date payment was made.

WHEREFORE, the Notice of Deficiency Determination dated September 17, 2003, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$1,911	\$ 460	\$2,371
		REMITTANCE	<2,552>
		OVERPAYMENT	181
		INTEREST	<u>15</u>
		TOTAL REFUND	<u>\$ 196</u>

Since the taxpayer overpaid the deficiency amount, a DEMAND for payment is not necessary.

An explanation of the taxpayer's 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]
