

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED],) DOCKET NO. 19062
)
) DECISION
Petitioner.)
_____)

On July 11, 2005, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 2000 in the total amount of \$42,573.

On September 7, 2005, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision modifying the Notice of Deficiency Determination.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold real property in Idaho in 2000. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for the taxable year 2000. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayer a letter asking him about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer responded indicating that the sale was a nontaxable transaction. The taxpayer stated he would review the transaction with an Idaho accountant to determine if he had an Idaho tax liability. The Bureau did not receive anything further from the taxpayer, so it reviewed the matter and determined the taxpayer was required to file an

Idaho income tax return. The Bureau prepared an Idaho income tax return for the taxpayer and sent him a Notice of Deficiency Determination, which the taxpayer appealed.

The taxpayer stated that he believed the gain on the sale of the property was not taxable because his wife lived in the house for six months of the year for three of the last five years. They had no other residence. In the alternative, the taxpayer stated he had a basis in the property and had made various improvements, as well as having paid closing costs and a sales commission. The Bureau requested documentation to support the taxpayer's basis and additional costs but the taxpayer failed to provide it. Consequently, the matter was referred for administrative review.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer responded by providing information regarding his basis in the property and documentation showing his selling costs. In addition to the documentation, the taxpayer again stated that his wife resided at the property for six months or more during each of the five years prior to the sale.

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 2000 was \$2,500. Therefore, if the taxpayer had Idaho source income in excess of \$2,500, he was required to file an Idaho income tax return.

The information available shows the taxpayer sold his Idaho property for \$354,000. Since the taxpayer did not substantiate his basis and other costs, the Bureau used this figure as the taxpayer's Idaho adjusted gross income. The Bureau also allowed the taxpayer one personal exemption and the standard deduction for a single individual.

The taxpayer argued that the sale was not a taxable transaction because his wife lived in the house for six months or more each year. The Tax Commission assumes by this statement that the taxpayer is suggesting the gain qualifies for the exclusion found in Internal Revenue Code section 121 – Exclusion of gain from the sale of principal residence. To qualify for this exclusion, the house must have been the taxpayer's principal residence for two of the five years preceding the date of the sale of the residence. When an individual uses more than one property as a residence, the determination of the principal residence depends upon all the facts and circumstances. Time spent at the residence is an important factor but when considered with all the facts and circumstances, it may not be controlling. Other relevant factors include, but are not limited to, the individual's place of employment; the place of abode of the individual's family members; the address listed on income tax returns, driver's license, vehicle registrations, and voter's registration; the mailing address for bills and correspondence; the location of the individual's banks; and the location of religious organizations and recreational clubs. (Treasury Regulation section 1.121-1) From the information available, it appears the Idaho property was used as a recreational or vacation home and not the taxpayer's principal residence. Therefore, the exclusion is not applicable.

However, the taxpayer did provide information and documentation to substantiate his basis in the property and the costs he incurred selling the property. The taxpayer also stated he made several improvements to the property and gave an estimated amount of the improvements. The Tax Commission found the taxpayer's basis and his selling cost allowable in the computation of the gain on the sale of the property. The Tax Commission did not allow the improvements to the property because the taxpayer did not provide any documentation to substantiate the improvements.

In addition to allowing the taxpayer's basis and selling costs, the Tax Commission found that the taxpayer was entitled to the Idaho capital gains deduction on the gain recognized on the sale. Idaho Code section 63-3022H states, a capital gain deduction is available on the sale of property located in Idaho that was held for more than 18 months. The information available indicates the taxpayer held the property for at least five years. Therefore, he is entitled to the capital gain deduction.

The taxpayer stated he was not a resident of Idaho. Idaho Code section 63-3026A provides for the computation of Idaho taxable income for nonresidents. It states that Idaho taxable income includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. It also states that the standard deduction or itemized deductions, if applicable, and personal exemptions, shall be allowed in the proportion that Idaho adjusted gross income bears to total (federal) adjusted gross income. The return prepared by the Bureau did not prorate the taxpayer's personal exemption or standard/itemized deductions. The Tax Commission obtained additional information from the Internal Revenue Service (IRS) to determine the allowable portion of the taxpayer's personal exemption and standard/itemized deductions. The IRS information provided two additional pieces of information: (1) the taxpayer filed a joint federal return with [Redacted], and (2) the taxpayer may not have reported the sale of the property on his federal income tax return. Based upon this information, the Tax Commission changed the taxpayer's return from a single filing status to a married filing joint. (See Idaho Code section 63-3031.) The Tax Commission also determined it was impossible from the information available to calculate the taxpayer's personal exemptions and standard/itemized deductions. Since the taxpayer did not provide the necessary

information to determine his exemptions and deductions, the Tax Commission did not allow any. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931).

The Bureau added penalty and interest to the taxpayer's tax deficiency. The Tax Commission reviewed those additions and determined they were appropriate and in accord with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated July 11, 2005, 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, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$5,153	\$1,288	\$1,750	\$8,191

Interest is calculated to September 15, 2006.

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

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2006, served a copy of the within and foregoing DECISION by sending the same by United State mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
