

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 19824
[Redacted]	)	
	)	DECISION
Petitioners.	)	
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[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated October 2, 2006. The Notice of Deficiency Determination asserted an additional liability for Idaho income tax and interest in the total amount of \$3,728 for 2004.

The petitioners reported a capital gain from the disposition of an interest in a limited liability company. They claimed the Idaho capital gains deduction with regard to this gain. The auditor disallowed this deduction stating that the asset disposed of was not “qualified property” pursuant to Idaho Code § 63-3022H.

The petitioners’ position is that the selling of an interest in a partnership is “in essence the selling of an undivided interest in the underlying property of the [partnership].” They cite Internal Revenue Code § 751 as authority for this position. They contend that the sale of the interest in the LLC is treated as a sale of the underlying assets of the LLC.

Idaho Code § 53-633 addresses the ownership of the assets of a limited liability company as follows:

- Ownership of limited liability company property. –
- (1) Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.
- (2) Property may be acquired, held and conveyed in the name of the limited liability company. Any interest in real property may be acquired in the name of the limited liability company, and title to

any interest so acquired shall vest in the limited liability company rather than in the members individually.

The nature of an interest in a limited liability company is addressed in Idaho Code § 53-635:

Nature of limited liability company interest. – A limited liability company interest is personal property.

The petitioners reported that the gain here in question was from the sale of an interest in a limited liability company. The auditor accepted this characterization. Pursuant to Idaho Code § 53-635, the nature of the asset was personal property, even though the bulk of the property owned by the limited liability company was real property.

Idaho Code § 63-3022H sets out the authority for the Idaho capital gains deduction. Only gains from the disposition of certain types of assets qualify for the deduction. The petitioners have not argued that the personal property (the interest in the LLC) qualified for the deduction. They instead argue that the sale of the interest in the LLC constitutes the sale of the underlying assets of the limited liability company. We have seen that, pursuant to Idaho Code §§ 53-633 and 53-635, this is not correct.

The taxpayer has the burden of proof with regard to deductions. They must show a provision allowing the deduction that they seek and show that they come within the bounds of such provision. New Colonial Ice Company, Inc. v. Helvering, 292 U.S. 435, 440 (1934).

If there is any ambiguity as to the law with regard to a deduction, the law is to be construed strongly against the taxpayer. Potlatch Corp. v. Idaho State Tax Commission, 128 Idaho 387, 913 P.2d 1157 (1996); Idaho State Tax Commission v. Stang, 135 Idaho 800, 802 (2001).

The Commission finds that the petitioners have failed to carry their burden of proving that the asset which they disposed of was “qualifying property” pursuant to Idaho Code § 63-3022H. Accordingly, the auditor’s determination must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated October 2, 2006, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest (computed to May 31, 2007):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$3,394	\$448	\$3,842

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

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2007, 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]

Receipt No.

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