

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 20130
[REDACTED],)
) DECISION
)
Petitioner.)
_____)

On January 31, 2007, 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 years 2001 and 2004 in the total amount of \$156,386.

On March 26, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather asked for additional time to submit income tax returns 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 that showed the taxpayer sold real property in Idaho in 2001 and 2004. The Bureau researched the Tax Commission's records and found the taxpayer did not file Idaho individual income tax returns for those years. 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 Idaho income tax returns. The taxpayer did not respond. The Bureau determined the taxpayer was required to file Idaho income tax returns and prepared returns for the taxpayer for the years 2001 and 2004. The Bureau sent the taxpayer a Notice of Deficiency

Determination which the taxpayer protested. The taxpayer stated he needed more time to obtain the necessary documentation to substantiate the ownership, sale, or transfer of the properties.

The Bureau allowed the taxpayer additional time but never received anything from the taxpayer. Therefore, the Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer replied that he was trying to get information from the title company on the closing of the properties. He stated he hoped to have something in a couple of weeks.

The Tax Commission monitored the taxpayer's progress and, within a few months, the taxpayer provided income tax returns for the tax years 2001, 2004 and 2005. The Tax Commission reviewed the 2001 and 2004 returns and found them to be a better representation of the taxpayer's Idaho taxable income. Therefore, the Tax Commission accepts the taxpayer's 2001 and 2004 returns, subject to the normal examination process of the Tax Commission, in lieu of the returns prepared by the Bureau.

During the Tax Commission's review of the taxpayer's returns, the Tax Commission found that the Idaho property the taxpayer sold qualified for the Idaho capital gain deduction. This deduction was not claimed on the taxpayer's Idaho income tax returns. Therefore, the Tax Commission adjusted the taxpayer's 2004 return to reflect the 60 percent capital gain deduction provided in Idaho Code section 63-3022H.

In addition to the Idaho capital gain deduction adjustment, the Tax Commission corrected the taxpayer's 2001 return to include the permanent building fund tax. This tax or fee is required on all Idaho individual income tax returns unless the individual is not required to file an Idaho return. The taxpayer claimed that he was not required to file an Idaho return and marked through

the permanent building fund tax on the Idaho income tax form. Presumably the taxpayer based this on the fact that he only had losses attributable to Idaho. However, the tax is based upon the requirement to file and the requirement to file is based on the taxpayer's gross income from Idaho sources. The taxpayer reported a loss on the sale of Idaho property, but he also had gross receipts from Idaho rental property in excess of \$32,000. Nonresidents are required to file Idaho income tax returns if they have gross income in excess of \$2,500 from Idaho sources (Idaho Code section 63-3030). Therefore, the Tax Commission added the permanent building fund tax to the taxpayer's 2001 Idaho income tax return.

The Bureau added interest and penalty to the taxpayer's Idaho tax deficiency. The Tax Commission reviewed those additions and found them appropriate to the returns the taxpayer submitted. Therefore, the Tax Commission upholds the addition of interest and penalty as computed on the taxpayer's modified tax deficiency in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated January 31, 2007, 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>
2001	\$ 0	\$ 0	\$ 0	\$ 0
2004	6,506	1,627	1,163	<u>9,296</u>
			TOTAL DUE	<u>\$9,296</u>

Interest is computed to February 1, 2008.

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 _____, 2007.

IDAHO STATE TAX COMMISSION

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]

Receipt No.
