

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 20339
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated June 12, 2007, asserting additional liability for Idaho income tax and interest in the total amount of \$2,854 for 2004.

The petitioners owned an interest in an LLC [Redacted]. The sole issue in this docket is the extent to which the petitioners are entitled to the Idaho capital gains deduction with regard to the gain from the sale of that property.

The authority for the Idaho capital gains deduction is set out in Idaho Code § 63-3029H. That code section states in part:

(3) As used in this section “qualified property” means the following property having an Idaho situs at the time of sale:

(a) Real property held at least eighteen (18) months;

\* \* \*

(4) If an individual reports a capital gain from qualified property from an S corporation or a partnership, a deduction shall be allowed under this section only to the extent the individual held his interest in the income of the S corporation or the partnership for the time required by subsection (3) of this section for the property sold.

The percentage of the LLC interest held by the petitioners was increased during 2004. The auditor determined that the deduction allowable to the petitioners should be limited to the lower percentage of the LLC that the petitioners held during the 18 months (the holding period for real property) prior to the date of the sale of the property.

The sale [Redacted] occurred on April 30, 2004. The gain from the sale was \$2,509,949. At the end of 2004, the petitioners owned 8.4 percent. Therefore, the portion of the gain attributed to them was \$210,836. They claimed the Idaho capital gains deduction on this amount.

The information in the file indicated that, at the beginning of 2004 and for the 18 months before the date of the sale of the land, the petitioners owned 6.4% of the LLC. The auditor limited the Idaho capital gains deduction, applying it only to the portion of the gain representing the portion of the LLC which the petitioners held for the 18 months prior to the sale of the land here in question. We find that the auditor properly limited this deduction.

WHEREFORE, the Notice of Deficiency Determination dated June 12, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The petitioners have paid the amount of the deficiency asserted in this matter. Therefore, no further demand is made.

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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