

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

In the Matter of the Protest of )  
 ) DOCKET NO. 20965  
[REDACTED], )  
 )  
 ) DECISION  
Petitioner. )  
\_\_\_\_\_ )

On January 2, 2008, 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 2003 in the total amount of \$26,374.

On February 25, 2008, 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.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold property located in Idaho in 2003. The Bureau researched the Tax Commission’s records and found that the taxpayer did not file a 2003 Idaho individual income tax return. The Bureau sent the taxpayer letters asking him about his requirement to file an Idaho income tax return. The taxpayer did not respond. The Bureau determined the taxpayer was required to file an Idaho income tax return. Therefore, the Bureau prepared a return for the taxpayer and sent him a Notice of Deficiency Determination citing Idaho Code section 63-3026A. The taxpayer protested the Bureau’s determination stating that he has never been a resident of Idaho and the sale of the property resulted in a loss.

The Bureau did not receive any further information from the taxpayer so it referred the matter for administrative review. The Tax Commission sent the taxpayer a letter discussing the

methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer did not respond to the Tax Commission's letter, so a follow-up letter was sent to the taxpayer. The taxpayer contacted the Tax Commission stating he was getting information on the purchase and sale of the property that he would send to the Tax Commission. He stated he owned the property for four or five years and he thought there may have been a small gain on the forced bank sale.

The Tax Commission allowed the taxpayer several months to provide the information he stated he was going to provide; however, nothing was received. The Tax Commission sent the taxpayer another letter giving him a final date to provide his information. The taxpayer did not respond or provide the information. Therefore, the Tax Commission decided the matter based upon the information available.

Idaho Code section 63-3026A states in part 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 property located in Idaho. Idaho Code section 63-3030 states in part that any nonresident individual having a gross income from Idaho sources in excess of \$2,500 for the taxable year is required to file an Idaho individual income tax return.

The taxpayer admittedly sold property located in Idaho. The selling price of the property was \$237,000. The taxpayer did not provide any information or documentation that established his basis in the property, so it is unknown how much of a gain or loss the taxpayer realized on the sale of the property. Nonetheless, it is known that the taxpayer received \$237,000 on the sale of the property. This is well in excess of the filing threshold for nonresident individuals.

Therefore, the Tax Commission finds the taxpayer did have a filing requirement with the state of Idaho.

The taxpayer initially argued that the sale of the property resulted in a loss, but later, the taxpayer stated he may have realized a small gain on the sale. Nevertheless, the taxpayer did not provide anything to show he sustained a loss or a gain on the sale of the property.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayer did not meet his burden. Nevertheless, the Tax Commission recognizes the Bureau's determination was not totally accurate. The Bureau's determination was based on the facts that the taxpayer was single and had no other income than the sale of the Idaho property. This is not the case. A quick review of the taxpayer's 2003 federal filing shows that the taxpayer filed as head of household and claimed one additional exemption.

Idaho incorporates the same filing statuses as the Internal Revenue Code (Idaho Code section 63-3002); therefore, the return prepared by the Bureau should use the same filing status as the taxpayer reported on his federal income tax return. Consequently, the taxpayer's Idaho income tax return should be filed as head of household with one additional exemption. Therefore, the Tax Commission modifies the return prepared by the Bureau to reflect the head of household filing status and the additional exemption.

In addition to the changes in filing status and the number of exemptions, the Tax Commission also finds the taxpayer was entitled to the Idaho capital gain deduction. During a conversation with the taxpayer, it was evident that he held the property for the requisite time as

provided in Idaho Code section 63-3022H. Therefore, the Tax Commission included the capital gain deduction in the computation of the taxpayer's Idaho taxable income.

The Bureau added interest and penalty to the taxpayer's Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated January 2, 2008, 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 (computed to October 31, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$5,834	\$1,459	\$2,010	\$9,303

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 \_\_\_\_\_, 2009.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, 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.