

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21318
[REDACTED])	
)	DECISION
Petitioners.)	
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On November 2, 2007, the Idaho State Tax Commission's (Commission) Income Tax Audit Bureau (Bureau) issued a Notice of Deficiency Determination to [Redacted] (petitioners) proposing additional income tax and interest for the taxable year 2005 in the total amount of \$1,910. The petitioners filed a timely protest and petition for redetermination. The petitioners were apprised of their appeal rights. The Commission, having reviewed the file, hereby issues its decision.

The petitioners claimed the Idaho Code section 63-3022H capital gains deduction on the gain from the sale of real property. The Bureau, based upon information available to the Commission, was unable to verify that the property sold was Idaho property. Since the Bureau could not verify that the property was Idaho property, the Bureau issued an NODD on November 2, 2007, disallowing the Idaho capital gains deduction. The petitioners have not responded with documentation verifying the location of the property.

Idaho Code section 63-3022H states, in pertinent part:

Deduction of capital gains. -- (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the

amount of any federal capital gains deduction relating to such property, but not below zero.

(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 twelve (12) months;
(Emphasis added.)

Under the Idaho statute, real property must have an Idaho situs at the time of sale. Since the petitioners have not verified that the real property sold was Idaho property, the Bureau was correct in denying the Idaho deduction. If a material fact upon which a deduction depends is not proved, the taxpayer, upon whom the burden rests, must bear his or her misfortune. *Burnet v. Houston*, 283 U.S. 223, 227-228 (1931).

WHEREFORE, the Notice of Deficiency Determination dated November 2, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$1,716	\$365	<u>\$2,081</u>
		TOTAL DUE	<u>\$2,081</u>

Interest is calculated through May 15, 2009, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

An explanation of the petitioners' rights 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 _____, 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.
