

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 21220
[Redacted]	)	
Petitioner.	)	DECISION
	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

On June 4, 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 taxable years 2003 and 2004 in the total amount of \$5,804.

On June 12, 2008, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter, but did provide additional information prior to the hearing rights letter being sent. 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 2003 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 letters asking him about the sale of the Idaho property and his requirement to file Idaho income tax returns. The taxpayer stated he would provide the Bureau with copies of his federal income tax returns. The Bureau never received the taxpayer's returns, so it reviewed the information available and determined the taxpayer was required to file Idaho income

tax returns. The Bureau prepared returns for the taxpayer and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination stating he needed more time to get copies of his federal income tax returns [Redacted]. The taxpayer provided a copy of the request form and a copy of the check for payment of the return copies. 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 did not respond. However, just prior to the Tax Commission sending out its hearing rights letter, the taxpayer provided information on the purchase price of the properties. The information provided was copies from the [Redacted] County assessor of its sales information for the two parcels. Since the taxpayer provided nothing further for the Tax Commission to consider, the Tax Commission based its decision on the information available.

#### PROPERTY SOLD IN 2003

In 2003, the taxpayer sold property in Idaho that appeared to have a sales price of \$35,000. This information was provided via a 1099S informational return. The information the taxpayer provided from [Redacted] County showed the property was purchased for a total sales price of \$75,000. The county information also showed the property was purchased [Redacted]. Because of this additional information, the Tax Commission researched the records available [Redacted]. The Tax Commission found that a 1099S was also submitted [Redacted] on the sale of the same piece of property. Further research found that the taxpayer and [Redacted] filed married filing joint Idaho income tax returns in the mid '90s.

Based on this information, the Tax Commission surmised the taxpayer and [Redacted] purchased the property while they were married, but when the property was sold, they were either separated or divorced. Since the taxpayer and [Redacted] co-owned the property, the Tax Commission also surmised the selling price of the property was divided between them and reported on separate 1099S forms. Therefore, rather than the selling price being \$35,000, the actual sales price of the property was \$70,000. And since the property was purchased for \$75,000, a loss was realized on the sale, of which the taxpayer's share was \$2,500. Consequently, the taxpayer was not required to file an Idaho return for 2003.

#### PROPERTY SOLD IN 2004

In 2004, the taxpayer sold another piece of property. The sales price as reported on the 1099S was \$37,500. The information the taxpayer provided from the county showed the property was purchased for \$62,000. Again the county information provided additional information not otherwise available. Besides the sales price, the information showed the buyer of the property was the [Redacted] Trust (Trust).

No information was available regarding the Trust. Therefore, the Tax Commission can only surmise that the taxpayer was a beneficiary of the Trust. However, based upon the purchase price of \$62,000, the Tax Commission does not believe the taxpayer was the only beneficiary of the Trust. Assuming facts similar to the property sale in 2003, regarding the sales price, the Tax Commission believes the 1099S filed and reported for the taxpayer only reflects half the sales price of the property. Based on this assumption, the taxpayer realized a gain on the sale of the 2004 property of \$6,500 ( $\$37,500 - (\$62,000/2)$ ). This gain is in excess of the filing requirements of Idaho Code section 63-3030 for nonresidents; therefore, the taxpayer was required to file a 2004 Idaho income tax return.

In addition to the findings on the property sales, the Tax Commission agreed with a subsequent modification the Bureau made to the returns it prepared for the taxpayer. In that modification, the Bureau incorporated information obtained [Redacted] which more accurately reflects 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 to the revised tax liability for taxable year 2004. See Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated June 4, 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$ 0	\$ 0	\$ 0	\$ 0
2004	138	35	44	<u>217</u>
			TOTAL DUE	<u>\$ 217</u>

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 \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, 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.

---