

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21860
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated January 28, 2009, asserting an additional liability for Idaho income tax and interest in the total amount of \$4,187 for 2005.

The only issue is whether a gain from the sale of a [Redacted] by [Redacted], an S corporation in which the petitioner held an interest, qualified for the Idaho capital gains deduction. The petitioner claimed the capital gains deduction. The auditor denied the deduction stating that the [Redacted] was not tangible personal property used in Idaho for twelve months by a "revenue producing enterprise" as defined in Idaho Code § 63-3022H(7).

The income attributable to the [Redacted] was largely due to its being leased to various entities. It appears that the client leasing the [Redacted] for the greatest portion of the time was the [Redacted].

Idaho Code § 63-3022H sets forth the controlling authority for the deduction:

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.

* * *

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

* * *

(b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;

* * *

(7) As used in this section "revenue-producing enterprise" means:

- (a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;
- (b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;
- (c) The feeding of livestock at a feedlot;
- (d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

The statute requires that the asset be used in a qualifying activity for at least 12 months. The petitioner submitted documentation which appears to show that the [Redacted] was used for the purpose of [Redacted] from May 29, 2003, through June 6, 2003. In addition, the petitioner contends that use by the [Redacted] should qualify even though the documentation submitted does not demonstrate the particular activity in which the [Redacted] was engaged. Also, the petitioner submitted documentation showing that he had been approved on May 1, 2001, by the [Redacted].

When addressing deductions, the taxpayer bears the burden of demonstrating that he is entitled to the deduction:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

* * *

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Co., Inc., v. Helvering, 292 U. S. 435, 440 (1934).

There are many ambiguities in the statute in question. For instance, is [Redacted] a qualifying activity? We find this less than clear from the statute. Clear, however, is that the petitioner must show that the asset in question was used in Idaho in a qualifying activity for 12 months. It is not clear from most of the material submitted by the petitioner what activity was being engaged in during the use of the [Redacted]. Therefore, the Commission finds that the petitioner has failed to carry his burden of proof that the [Redacted] was used in Idaho in a “revenue producing enterprise” for the required period.

WHEREFORE, the Notice of Deficiency Determination dated January 28, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pays the following tax and interest (computed to May 15, 2010):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$3,500	\$879	\$4,379

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

An explanation of the petitioner’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.

Copy Mailed to:

[Redacted]
