

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22180
[REDACTED],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On August 25, 2009, the staff of the Taxpayer Accounting Section of the Revenue Operations Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing income tax and interest for taxable year 2008 in the total amount of \$103.56.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2008 nonresident Idaho individual income tax return. During processing, the taxpayers' return was identified as a return with a potential error. The Taxpayer Accounting Section (Taxpayer Accounting) reviewed the taxpayers' return and found that the taxpayers claimed an Idaho capital gains deduction on property [Redacted]. Taxpayer Accounting corrected the taxpayers' return and sent them a letter explaining the correction. The taxpayers disagreed with the correction and protested the change to their Idaho income tax return.

The taxpayers provided additional information regarding the acquisition of the property and its sale. They stated the property was held for longer than the twelve-month minimum

holding period. They provided another copy of their federal installment sale form and said that, according to Idaho's instructions on form CG, they should be entitled to the deduction.

Taxpayer Accounting reviewed the information and referred the matter for administrative review. The Tax Commission reviewed the case and sent the taxpayers a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond to the Tax Commission's letter, so the Tax Commission decided the matter based upon the information available.

Idaho Code section 63-3022H allows an individual taxpayer that reports a capital gain of qualified property to deduct 60 percent of the gain from his Idaho taxable income. Qualified property includes, among other things, real property located in Idaho that was held for at least twelve months.

The property the taxpayers sold and reported a capital gain [Redacted]. Therefore, even though the taxpayers held the property longer than twelve months, the property was not qualified property because of its location [Redacted]. Consequently, the Idaho capital gains deduction is not available on the gain on the sale or the installment of the property.

In addition to the property not being qualified property, the gain on the installment sale was not reported as income to Idaho. The taxpayers are [Redacted] residents, and they filed a nonresident Idaho income tax return to report their income from two Idaho partnerships. Since the gain on the installment sale of the [Redacted] property was not included as Idaho income and the taxpayers were not taxed by Idaho on their gain, no capital gain deduction is allowed.

WHEREFORE, the Notice of Deficiency Determination dated August 25, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$102	\$1.56	\$103.56
		REMITTANCE	<u>\$103.56</u>
		BALANCE DUE	<u>\$ 0.00</u>

An explanation of the taxpayers' 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.

\_\_\_\_\_