

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22331
Petitioner.)
DECISION
_____)

On September 2, 2009, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing additional income tax, penalty, and interest for taxable year 2006 in the total amount of \$3,848.

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

The taxpayer timely filed his 2006 Idaho individual income tax return. The taxpayer's return was selected for examination of the Idaho capital gains deduction claimed on the return. The Income Tax Audit Bureau (Bureau) reviewed the taxpayer's return and found that the taxpayer claimed an Idaho capital gains deduction on property that was held for less than twelve months. The Bureau corrected the taxpayer's return and sent him a Notice of Deficiency Determination.

The taxpayer disagreed with the Bureau's determination and requested a redetermination. The taxpayer stated he reviewed the criteria for the Idaho capital gains deduction. The taxpayer believes the house sold qualified because he resided in the house for at least one year. The taxpayer asked that the Tax Commission look at the deduction again.

The Tax Commission reviewed the matter and 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 initial letter or to its follow-up letter. Therefore, 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 taxpayer sold and reported a capital gain on was located in Idaho. However, according to the taxpayer's income tax return, the property was not held for a full twelve months. The taxpayer acquired the property on July 21, 2005, and sold it on June 30, 2006; twenty-one days short of twelve full months. Consequently, the property is not qualified property. Therefore, the Idaho capital gains deduction is not available on the gain on the sale of the house.

WHEREFORE, the Notice of Deficiency Determination dated September 2, 2009, is hereby 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>
2006	\$3,173	\$159	\$695	\$4,027

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.