

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22782
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On March 16, 2010, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable year 2006 in the total amount of \$183.

On April 9, 2010, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a telephone hearing which was held on October 12, 2010. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayers sold real property in Idaho in 2006. The Bureau researched the Tax Commission’s records and found the taxpayers did not file an Idaho individual income tax return for taxable year 2006. 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 taxpayers a letter asking them about the sale of the Idaho property and their requirement to file an Idaho income tax return. The taxpayers responded that they were residents of Utah in 2006 and did not have any Idaho income. They stated the property sold in Idaho was [Redacted] personal residence and no Idaho income was produced. The taxpayers provided partial copies of their [Redacted] and Utah returns to support their statements.

The Bureau reviewed the information and determined additional information was needed to substantiate the taxpayers' claim. The Bureau asked the taxpayers to provide a complete copy of their 2006 federal return which the taxpayers provided. The Bureau reviewed the taxpayers' federal return and determined the taxpayers did not meet any of the special safe harbor provisions of Internal Revenue Code (IRC) section 121 to grant them the exclusion of the gain on the sale of the property. Therefore, the Bureau prepared a return for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination. The taxpayers stated they believed their situation was analogous to the safe harbor provision of multiple births. The taxpayers stated that when they married, the number of children in the household increased by three making the Idaho house no longer suitable. The taxpayers stated their situation was so closely related to the [Redacted] safe harbor provision that the sale should qualify for the exclusion.

The Bureau acknowledged the taxpayers' protest and sent the matter for administrative review. The Tax Commission sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers requested a telephone hearing in which the following information was provided.

[Redacted] was previously married and [Redacted] for 10 to 15 years before moving back to Idaho. He was transferred [Redacted] by his employer. While in [Redacted], [Redacted] wife divorced him. [Redacted] moved back to Idaho [Redacted] and began renting the house [Redacted]. On November 15, 2005, [Redacted] purchased the house he was renting [Redacted]. [Redacted] had two children ages 7 and 12, a son and a daughter, respectively. [Redacted] met [Redacted] at a [Redacted] social event [Redacted]. [Redacted]. The taxpayers first began taking an interest in each other in November 2005. The taxpayers first contemplated marriage on

December 15, 2005, and married on December 30, 2005. [Redacted]. [Redacted] house [Redacted] was 1,400 square feet with only two bedrooms. The taxpayers purchased a house [Redacted] that was substantially larger with seven bedrooms. The taxpayers' argument centered on the fact that, because of their blended family, the house [Redacted] was no longer suitable, and therefore, qualified for the section 121 exclusion.

IRC section 121 provides for the exclusion of the gain on the sale of a taxpayer's personal residence if the residence was the taxpayer's primary personal residence for an aggregate of two years of the five years before the date of the sale of the property. The taxpayers' sale does not meet this requirement.

However, IRC section 121(c)(2) provides certain exceptions for taxpayers who do not meet the general exclusion requirements. Individuals can exclude the gain on the sale of their personal residence if such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances. Treasury Regulation section 1.121-3(e) states, "A sale or exchange is by reason of unforeseen circumstances if the primary reason for the sale or exchange is the occurrence of an event that the taxpayer could not reasonably have anticipated before purchasing and occupying the residence." The Internal Revenue Service ruled in Private Letter Ruling 200725018 that an unforeseen circumstance included an instance where, as a result of taxpayers getting married, the size of the taxpayers' blended family made the home unsuitable as a residence for their new family. This was unforeseen as the taxpayers had not met until after the home was purchased.

The taxpayers' circumstances in this case are very similar to the individuals in the aforementioned private letter ruling. [Redacted] occupied the home as his primary residence prior to meeting [Redacted]. The home was purchased prior to the taxpayers taking any serious

interest in each other. The taxpayers married, and the home became unsuitable for the size of their blended family.

Since the taxpayers' circumstances closely mirrored those in the private letter ruling, the Tax Commission finds the taxpayers' gain on the sale can be excluded in accordance with the reduced maximum exclusion provisions of IRC section 121. And because the gain on the sale is totally excluded from the taxpayers' income, the taxpayers were not required to file an Idaho individual income tax return for taxable year 2006.

WHEREFORE, the Notice of Deficiency Determination dated March 16, 2010, is hereby CANCELLED.

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.
