

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22873
)
)
Petitioner.) DECISION
)
_____)

On April 7, 2010, the staff of the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing income tax, penalty, and interest for taxable year 2005 in the total amount of \$71, 817.

On May 11, 2010, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather submitted additional information for the Commission to consider. The Commission, having reviewed the file, hereby issues its decision modifying the NODD.

The Bureau received information that showed the taxpayer sold real property in Idaho in taxable year 2005. The Bureau researched Commission records and found the taxpayer did not file an Idaho individual income tax return for taxable year 2005. 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 several letters asking him about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer did not respond, therefore, the Bureau prepared an Idaho income tax return for the taxpayer and sent him an NODD.

Upon receipt of the NODD, the taxpayer sent a copy of his federal income tax return that reported half of the sale of the property and excluded the gain from the sale under IRC section 121. The Bureau sent a modified NODD to the taxpayer that reflected the total sales price and the taxpayer was asked to provide further documentation to support his entitlement to the IRC section 121 exclusion. When no further information was received, the taxpayer's file was sent to the Legal and Tax Policy Department for continuation of the appeals process.

The Commission sent the taxpayer a letter giving him two options for having the NODD redetermined. The taxpayer did not request a hearing but rather decided to provide additional documentation for consideration.

The Idaho Code is clear in section 63-3026A (3)(ii) that income resulting from the disposition of real property in Idaho is Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The threshold for nonresident individuals for taxable year 2005 was \$2,500. Therefore, if the taxpayer realized a gain from the sale of the Idaho property in excess of \$2,500, he was required to file an Idaho income tax return.

Information available to the Commission shows the taxpayer sold the Idaho property for \$623,470. The Worksheet for the Sale of Home [Redacted] reported a purchase price of \$142,500, improvements and additions of \$100,000, and other miscellaneous fees that resulted in an adjusted basis in the property of \$243,642. The taxpayer, believing his ex-wife was responsible for half, reported half of the sales price, \$311,735, on his return which resulted in a gain of \$51,241. This amount exceeds the filing requirements of Idaho Code section 63-3030; therefore, the taxpayer was required to file an Idaho income tax return.

Based on the information provided by the taxpayer [Redacted] the Bureau prepared an Idaho return for the taxpayer. However, after further review [Redacted], it appears the taxpayer, while reporting only half of the sales price, claimed the entire purchase price in determining his gain. Based on this information and the additional documentation submitted by the taxpayer, the Commission hereby issues its decision modifying the return prepared by the Bureau.

The taxpayer argued from several different angles that he had no tax liability with the state of Idaho. The taxpayer claims that the basis in the property, as reflected [Redacted], is incorrect; the gain, if any, would be excluded under IRC section 121; and, that it is impossible to obtain any supporting documentation because the Commission failed to notify him in a timely manner of his filing requirement.

In support of his argument that the numbers reflected [Redacted] are incorrect, the taxpayer provided a copy of his closing statement for the purchase of the Idaho property he sold in taxable year 1999. According to the statement, the taxpayer, and his wife at the time, purchased the property for \$185,000, not \$142,500 as shown on his return. As for the cost of improvements, based on conversations with the taxpayer wherein he explained what changes were made to the property, the \$150,000 the taxpayer believes he spent is considered to be reasonable and will be included in the calculation of the taxpayers adjusted basis. When the new information is considered along with the information on the return, the Commission has determined the taxpayer's adjusted basis in the property to be \$336,142. With a sales price of \$623,470, selling expenses of \$16,852, and an adjusted basis of \$336,142, the taxpayer's gain on the sale of the Idaho property would be \$270,476, a \$135,238 gain to both the taxpayer and his ex-wife.

Taxpayers are allowed to exclude from gross income the gain from the sale of property under IRC section 121 which states in part;

(a) Exclusion Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

The taxpayer claimed the section 121 exclusion, but when asked by the Bureau to provide evidence that he was entitled to the exclusion, the taxpayer failed to provide any documentation. The Bureau therefore determined, and the Commission agrees, that any gain from the sale of the Idaho property would not be excludable under IRC section 121.

The taxpayer also argued that he was unaware of his requirement to file an Idaho income tax return and his lack of supporting documentation was a direct result of the Commission not contacting him in a timely manner. The responsibility for filing income tax returns is the taxpayer's. Each taxpayer has the responsibility to become familiar with the taxing schemes of the states where he has taxable activities. The Commission makes every effort to review and analyze all the information it receives in a timely manner in fulfilling its charge and duties (Idaho Code section 63-105). Ideally, the Commission would like to notify taxpayers of any tax deficiency shortly after the end of the filing season. However, with the volume of information, the timing of receiving the information, and the available staff, it is not possible.

In 1999, the taxpayer, and his wife at the time, purchased real property in Idaho. They sold the property in taxable year 2005 and the gain on the sale exceeded \$2,500. The taxpayer was required to file an Idaho income tax return.

The Commission has modified the return prepared by the Bureau to show an adjusted basis in the property that reflects the increased purchase price and the additional cost of improvements. The modified return starts with half of the gain on the sale (Idaho source

income), subtracts the Idaho capital gains deduction (the property was held over 12 months), and prorated the taxpayer's standard deduction and exemption (Idaho Code section 63-3026A).

WHEREFORE, the Notice of Deficiency Determination dated April 7, 2010, is hereby MODIFIED, and as 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>
2005	\$3,694	\$924	\$1,071	\$5,689

Interest is calculated through March 4, 2011.

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.
