

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22971
Petitioner.)
DECISION
_____)

On March 23, 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 \$14,798.

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 for \$150,000. 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 a letter asking him about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer responded by phone stating he did not believe there was a gain on the sale but he would have his accountant send documentation. No

additional information was received. Therefore, the Bureau prepared a return for the taxpayer and sent the taxpayer an NODD based on the information available to the Commission.

Upon receipt of the NODD, the taxpayer, through his appointed representative, submitted a worksheet for the sale of his home. The worksheet showed the taxpayer's adjusted basis in the property and a gain of \$72,220 which, according to the representative, was excluded from income under Internal Revenue Code (IRC) section 121. Based on this information, the Bureau sent the taxpayer a modified NODD along with a request for documentation to support the taxpayer's 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's representative a letter giving the taxpayer two options for having the NODD redetermined. The representative did not request a hearing and has not provided any additional documentation in support of the taxpayer's entitlement to the IRC section 121 exclusion.

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, the taxpayer is required to file an Idaho income tax return.

Information available to the Commission shows the taxpayer sold Idaho property in 2005. The worksheet for the sale of the home provided by the taxpayer shows a gain of \$72,200. This

amount exceeds the filing requirements of Idaho Code section 63-3030; therefore, the taxpayer is required to file an Idaho income tax return.

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 sold the Idaho property in 2005. Therefore, in order to qualify for the IRC section 121 exclusion, the taxpayer must have used the Idaho home as his principal residence for a period of time totaling two years or more between the years 2000 to 2005. According to information provided by the taxpayer's representative, the taxpayer left Idaho in 1998. Tax Commission records substantiate this claim as no Idaho income tax returns were filed after 1998, fish and game licenses were purchased as non-residents, and federal income tax information lists a Florida address as the taxpayer's residence.

The taxpayer claimed the IRC 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.

Idaho Code section 63-3022H provides taxpayers under certain circumstances an Idaho capital gains deduction as follows:

63-3022H. Deduction of capital gains. (1) If an individual taxpayer reports a net capital gain in determining taxable income, sixty percent (60%) of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.

(2) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. Net capital gains treated as ordinary income by the internal revenue code do not qualify for

the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

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

(a) Real property held at least eighteen (18) months;

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

(c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;

(d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;

(e) Timber grown in Idaho and held at least twenty-four (24) months;

(f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the internal revenue code shall apply, except that when the holding period includes any period during which the taxpayer held property other than the property sold, all property held during the holding period must qualify under this section.

(4) If an individual reports a capital gain from qualified property from an S corporation or a partnership, a deduction shall be allowed under this section only to the extent the individual held his interest in the income of the S corporation or the partnership for the time required by subsection (3) of this section for the property sold.

(5) If an individual reports a capital gain from an estate, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the decedent, the estate, or the beneficiary, or a combination thereof.

(6) If an individual reports a capital gain from a trust, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the grantor, the trust, or the beneficiary, or a combination thereof.

(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.

While the taxpayer did not provide a copy of his federal return, according to records available to the Commission, the taxpayer reported a long-term capital loss of \$55,000 for taxable year 2005. Therefore, while entitled to the Idaho capital gains deduction, the amount is limited according to Idaho Code 63-3022H (2).

The Bureau modified the Notice of Deficiency Determination dated March 23, 2010, to reflect the taxpayer's adjusted basis in the Idaho property. The Commission further modifies the NODD to allow the taxpayer the Idaho capital gains deduction.

WHEREFORE, the Notice of Deficiency Determination dated March 23, 2010, is hereby MODIFIED, and as modified, 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	\$2,647	\$617	\$722	\$3,986

Interest is calculated through March 30, 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.
