

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22058
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On April 30, 2009, 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 2004 in the total amount of \$389,479.

On July 6, 2009, the taxpayers filed an appeal and petition for redetermination. The taxpayers did not request a hearing but rather wanted to provide additional information for the Tax Commission to consider. 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 2004. The Bureau researched the Tax Commission's records and found the taxpayers did not file Idaho individual income tax returns for 2004. 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 letters asking them about the sale of the Idaho property and their requirement to file an Idaho income tax return. The taxpayers did not respond. The Bureau determined the taxpayers were required to file an Idaho income tax return and prepared a 2004 return for the taxpayers. The Bureau sent the taxpayers a Notice of Deficiency Determination which the taxpayers protested.

The taxpayers submitted a nonresident 2004 return to the Bureau in lieu of the return prepared by the Bureau. The Bureau reviewed the return and found that the taxpayers reported only one of the two property sales that occurred in 2004. The Bureau modified its determination and sent the taxpayers a letter stating that their return failed to report the sale of the [Redacted] Idaho, property. The taxpayers made no further contact with the Bureau.

The Bureau referred 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 contacted the Tax Commission and stated they would provide information on their basis in the property. The taxpayers stated the property was sold for no gain.

The Tax Commission monitored the taxpayers' progress in getting their basis information; however, after several months, the taxpayers had still provided no additional information. Eventually the taxpayers stopped responding to the Tax Commission's requests. Therefore, the Tax Commission decided the matter based upon the information available.

Mr. [Redacted] was in the business of constructing and then renting or selling rental property. In 2004, the taxpayers sold two of their business properties that were located in Idaho. Since the taxpayers transacted business in Idaho and had Idaho source income, they were required to file an Idaho individual income tax return for taxable year 2004. The taxpayers did not contest this fact. The taxpayers submitted a 2004 income tax return that reported all their Idaho income except for the sale of the [Redacted] property. The taxpayers were given the opportunity to provide information on the purchase and improvement of the [Redacted] property. The taxpayers did not provide that information.

The Tax Commission realizes the taxpayers have a basis in the [Redacted] property, however, it is the taxpayers' burden to provide adequate proof of any material fact upon which a deduction depends, and if they do not prove the deduction, the taxpayers must bear their misfortune. Burnet v. Houston, 283 U.S. 223, 51 S. Ct. 413 (1931).

The Tax Commission reviewed the Bureau's modified determination and found that it included everything the taxpayers reported on their 2004 return plus the addition of the sale of the [Redacted] property and a deduction for Idaho capital gains on the sale of the other Idaho property. Therefore, absent any further documentation that substantiates the taxpayers' basis in the [Redacted] property, the Tax Commission finds the Bureau's modified determination a reasonable representation of the taxpayers' Idaho taxable income.

The Bureau added interest and penalty to the taxpayer's Idaho tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated April 30, 2009, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$11,785	\$2,946	\$4,172	\$18,903

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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.