

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22549
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated November 24, 2009, asserting income tax, penalty, and interest in the total amount of \$9,570 for taxable year 2004. The taxpayers disagreed with the computation of the gain on the sale of Idaho property they sold in 2004. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayers sold real property located in Idaho in 2004. The Bureau researched the Tax Commission’s records and found the taxpayers did not file an Idaho individual income tax return for that year. 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 to the Bureau’s letters, so the Bureau reviewed the information available, determined the taxpayers were required to file an Idaho income tax return, prepared a return for the taxpayers, and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau’s determination and sent in copies of their closing statement on the sale of the property, a warranty deed, and a deed of trust. The Bureau reviewed the information the taxpayers provided and modified its audit report to include the closing costs on the sale and the Idaho capital gains deduction. The Bureau sent the modified report to the

taxpayers but did not get a response from them. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond, so the Tax Commission reviewed the information available and decided the matter.

LAW AND ANALYSIS

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. In 2004, the taxpayers sold property in Idaho with a sales price of \$114,900. This information was provided via a [Redacted] and confirmed by the closing statement the taxpayers provided.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2004, the threshold amount for filing a nonresident return was \$2,500. Therefore, if the taxpayers realized income on the sale of the Idaho property in excess of \$2,500, they were required to file a 2004 Idaho income tax return.

The Bureau's initial determination of the taxpayers' income was based solely upon the sales price of the property sold. The Bureau did not account for a basis in the property or any other income earned during the taxable year.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayers to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayers provided additional information not available to the Bureau when it

determined the gain on the sale of the Idaho property. The taxpayers met their burden of showing the deficiency determination was incorrect. The Bureau modified its determination but did not include anything for the taxpayers' basis in the property. While it is not reasonable to assume the taxpayers had no basis in the property, it is likewise unreasonable for the Tax Commission to determine a basis without the proper documentation. In this case, the taxpayers provided a copy of a deed of trust in favor of a lending institution securing a note the taxpayers made two days after acquiring the warranty deed on the property. The deed of trust identified the amount borrowed by the taxpayers. Considering the timing of the documents, it is reasonable to assume the taxpayers' basis in the property closely approximated the amount borrowed. Therefore, the Tax Commission allowed the amount identified in the deed of trust as the taxpayers' basis.

CONCLUSION

The taxpayers sold property located in Idaho. The initial gain determined by the Bureau was in excess of the filing requirement for nonresidents. The Tax Commission reviewed the Bureau's computation of the gain on the sale and the information provided by the taxpayers. The Tax Commission found that the gain should be further modified by the amount determined to be the taxpayers' basis. As modified, the Tax Commission upholds the Bureau's determination.

The Bureau added interest and penalty to the taxpayers' Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate as to the taxpayers' modified tax liability. See Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated November 4, 2009, and directed to [Redacted] is **AFFIRMED AS MODIFIED** by this decision.

IT IS ORDERED 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	\$30	\$10	\$12	\$52

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

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.
