

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22556
)
)
Petitioner.) DECISION
)
_____)

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated November 4, 2009, asserting income tax, penalty, and interest in the total amount of \$35,949 for taxable year 2005. The taxpayers protested the gain determined on the sales of Idaho property. 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 in Idaho in 2005. The Bureau researched the Tax Commission's records and found the taxpayers did not file an Idaho individual income tax return for the taxable year 2005. 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 failed to respond. The Bureau determined the taxpayers were required to file an Idaho income tax return, so it prepared a return for the taxpayers and sent them a Notice of Deficiency Determination. The taxpayers protested the Bureau's determination stating they informed their accountant when they received the Bureau's first letter. They stated their accountant told them it was an error and that their accountant was sending an amendment. The Bureau did not receive anything further from the taxpayers, so the matter was referred for administrative review.

The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers contacted the Tax Commission

and stated the properties sold were sold at a loss. The taxpayers stated they were living in Idaho, purchased a house, decided to build a house, sold the first house, acquired the land for building, started building, and then decided to move back to [Redacted] where their families lived. The taxpayers provided a copy of their 2005 Schedule D that was filed with the [Redacted] and a document listing the sales price and cost of the two properties sold. The Tax Commission reviewed the information and determined it was necessary that the taxpayers provide the source documents to establish their basis in the properties sold. The Tax Commission asked the taxpayers to provide the source documents and a part-year Idaho income tax return for the time they resided in Idaho in 2005. The taxpayers did not respond nor did they provide the necessary documentation or income tax return. Therefore, the Tax Commission decided the matter based upon the information available.

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. Idaho Code section 63-3030 sets the filing requirement thresholds for part-year resident individuals. The threshold for taxable year 2005 was \$2,500 from all sources while a resident of Idaho and from Idaho sources while a nonresident of Idaho.

The information available shows the taxpayers received wages while a resident of Idaho in excess of \$2,500. In addition, the taxpayers received interest and dividend income while residents of Idaho. Therefore, based upon this information alone, the taxpayers were required to file an Idaho individual income tax return for taxable year 2005.

The Bureau's examination of the taxpayers' requirement to file an Idaho income tax return was solely based upon the sale of two Idaho properties. The Bureau did not consider the income earned by the taxpayers while they were residents of Idaho. Furthermore, the taxpayers did not just sell two Idaho properties, they sold three: [Redacted]. The total sales of Idaho property was \$649,200, none of which were reported to Idaho.

The taxpayers stated the properties located at [Redacted] were sold at a loss. The taxpayers did not mention the third property. The [Redacted] property was reported on the taxpayers' Schedule D they filed [Redacted]. The taxpayers provided a worksheet showing the property at [Redacted] was sold at a loss. No source documents were provided to substantiate the losses on either property. The property at [Redacted] does not appear to be reported on the taxpayers' federal return.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer 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 did not provide any information to establish their basis in any of the properties sold; they failed to meet their burden. However, it is not reasonable to assume the taxpayers had no basis in the properties, but without documentation to show the purchase price of the properties, the Tax Commission is left to guess the taxpayers' basis. Since it is the taxpayers' responsibility to show their entitlement to a deduction, INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S. Ct. 788, 78 L. Ed. 1348 (1934), the Tax Commission will not guess the taxpayers' basis.

The Bureau's determination of the taxpayers' Idaho taxable income consisted of the sales price of the [Redacted] properties and subtracting two personal exemptions and the standard deduction for married individuals filing a joint return. The Bureau did not include the taxpayers' wages earned in Idaho or the other income received while the taxpayers were residents of Idaho. The Bureau also did not include the sale of the third Idaho property. The Bureau's determination did not follow the statutory requirements of Idaho Code section 63-3026A in prorating the taxpayers' personal exemptions and standard deduction, nor did the Bureau allow a third exemption as shown in the federal account transcript it obtained. The Bureau also failed to allow a prorated grocery credit for the time the taxpayers resided in Idaho. All these modifications were included in the Tax Commission's final decision.

CONCLUSION

With all the omissions of income and the taxpayers' failure to establish their basis in the property sold, the Tax Commission finds that the Idaho adjusted gross income as determined by the Bureau could be a reasonably accurate representation of the taxpayers' income based upon the available information. Therefore, the Tax Commission upholds the Bureau's determination of Idaho adjusted gross income but modifies its determination of Idaho taxable income to include an additional exemption deduction and to prorate the exemptions and standard deduction in accordance with Idaho Code section 63-3026A. The Tax Commission also allows the taxpayers a prorated grocery credit for the portion of 2005 that they were residents of Idaho.

THEREFORE, the Notice of Deficiency Determination dated November 4, 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>
2005	\$24,083	\$6,021	\$7,446	\$37,550

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.