

son. The Bureau sent the taxpayers a modified audit determination but received no response from the taxpayers. Therefore, the Bureau referred the matter 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 failed to respond, so the Tax Commission sent them a follow-up letter. Still, the taxpayers did not respond. 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 individuals having Idaho source income. The threshold for nonresident individuals for taxable years 2004 and 2005 was \$2,500. Therefore, if the taxpayers realized a gain from the sale of the Idaho property in excess of \$2,500, they were required to file Idaho income tax returns.

The information available shows the taxpayers sold property for a total of \$240,836 in 2004 and a total of \$272,600 in 2005. The taxpayers documented a property sale in Utah in 2005 for \$265,000 and documented a quit claim of property in 2004 involving a mortgage instrument of \$225,000. The remaining property sales totaled \$15,836 for 2004 and \$7,600 for 2005. The taxpayers have not provided any information on the smaller property sales.

The Bureau cancelled its Notice of Deficiency Determination for the property sales in 2005. The Tax Commission reviewed the Bureau's cancellation and found it appropriate as it relates to the property located [Redacted]. The Tax Commission is not clear as to why the

Bureau did not pursue the property sale of \$7,600 in 2005; nevertheless, the Tax Commission upholds the Bureau's decision not to pursue that property sale.

The 2004 property sales were four in total. The largest of the sales was a financing scheme wherein the taxpayers essentially gifted farm land to their son who in turn mortgaged the property for the reported sales price and then quit claim deeded (or contributed) the property to an LLC owned by the taxpayers and their son and daughter-in-law. The substance of the transaction was the taxpayers financed the LLC's business operations through the mortgage of the property. The Bureau determined this to be a nontaxable exchange since the taxpayers retained ownership of the property through a related party.

However, the other three property sales in 2004 were not documented, and the Bureau determined the combined sales exceeded the filing threshold of Idaho Code section 63-3030 for the taxpayers to file a 2004 Idaho individual income tax return. The Bureau modified its original audit to exclude the large property and added the three smaller sales.

The taxpayers have not provided any information regarding the three smaller property sales. They have not met their burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). However, during its review of the return prepared by the Bureau, the Tax Commission found that the Bureau used the standard deduction in its preparation of the taxpayers' 2004 Idaho income tax return rather than the itemized deductions reported on the taxpayers' 2004 federal income tax return. Itemizing the taxpayers' deductions results in a lesser tax owed to Idaho. Therefore, the Tax Commission changes the Bureau's modified audit to reflect the itemized deductions claimed by the taxpayers.

CONCLUSION

The taxpayers failed to provide adequate information on the sale of three parcels of land in 2004. They did not meet their burden of proof to show that they were not required to file an Idaho income tax return. Therefore, the Tax Commission upholds the Bureau's modified determination as corrected.

THEREFORE, the Notice of Deficiency Determination dated October 19, 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	\$107	\$27	\$39	\$173

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.
