

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22650
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated December 30, 2009, asserting income tax, penalty, and interest in the total amount of \$24,518 for taxable year 2005. The taxpayer disagreed with the computation of the gain on the sale of Idaho property he sold in 2005. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold real property located in Idaho in 2005. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for that year. The Bureau sent the taxpayer letters asking about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer did not respond to the Bureau's letters, so the Bureau reviewed the information available, determined the taxpayer was required to file an Idaho income tax return, prepared a return for the taxpayer, and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination stating that after he had repaired the house and made it livable, there was no gain on the sale. The taxpayer stated the Tax Commission was wrong in its determination that he was required to report the sale of the

property to Idaho. The taxpayer stated he was only required to report the sale to his state of residence and the federal government.

The Bureau asked the taxpayer to provide information on the purchase, cost of improvements, and the sale of the property. The taxpayer stated he would get the information but he needed additional time to put it together. The Bureau allowed the taxpayer the additional time he requested, but when nothing was provided, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer 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 2005, the taxpayer sold property in Idaho with a sales price of \$222,500. This information was provided via a [Redacted] and confirmed in a statement by the taxpayer.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2005, the threshold amount for filing a nonresident return was \$2,500. Therefore, if the taxpayer realized income on the sale of the Idaho property in excess of \$2,500, he was required to file a 2005 Idaho income tax return.

The Bureau's determination of the taxpayer's 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 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 taxpayer provided additional information not available to the Bureau when it determined the gain on the sale of the Idaho property. The information provided, although not fully documented, is evidence that the taxpayer had basis in the property. While it is not reasonable to assume the taxpayer had no basis in the property, it is likewise unreasonable for the Tax Commission to determine a basis without some sort of documentation.

In this case, the taxpayer provided evidentiary information to establish some of his basis in the property sold. The Tax Commission considered the information with the other facts and circumstances of the case and decided it was reasonable to allow the taxpayer's claimed basis in the computation of the gain or loss on the sale of the property.

As previously stated, the Bureau's determination included only income from the sale of the Idaho property; it did not include any other income earned by the taxpayer. Since the Bureau only included the sale of the property, its computation of the taxpayer's Idaho taxable income did not follow the statutory requirements of Idaho Code section 63-3026A. Idaho Code section 63-3026A requires that a nonresident's personal exemptions and standard deduction be prorated in the ratio of Idaho source income to total income. The Bureau obtained information from the [Redacted] regarding the taxpayer's [Redacted] income but did not use that information in its computation of the taxpayer's Idaho taxable income. Therefore, the Tax Commission modified

the taxpayer's Idaho taxable income to incorporate the provisions of Idaho Code section 63-3026A.

CONCLUSION

The taxpayer 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 and the information provided by the taxpayer. The Tax Commission found that the gain should be modified to include the amount determined to be the taxpayer's basis. The Tax Commission also found that the taxpayer's Idaho taxable income needed correcting in order to be in compliance with Idaho Code section 63-3026A. Therefore, the Tax Commission upholds the Bureau's determination that the taxpayer was required to file an Idaho income tax return and the taxpayer's tax liability as modified by this decision.

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

THEREFORE, the Notice of Deficiency Determination dated December 30, 2009, and directed to [Redacted] is AFFIRMED AS MODIFIED by this decision.

IT IS ORDERED 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	\$2,490	\$623	\$805	\$3,918

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 _____ 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.