

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22749
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated February 3, 2010, asserting income tax, penalty, and interest in the total amount of \$27,809 for taxable year 2005. The taxpayer disagreed with the computation of the gain on the sale 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 taxpayer sold real property 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 the taxable year 2005. 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 failed to respond. The Bureau determined the taxpayer was required to file an Idaho income tax return, so it prepared a return for the taxpayer and sent him a Notice of Deficiency Determination. The taxpayer protested the Bureau's determination stating the Bureau did not have the correct basis information on the sale. The taxpayer stated he needed to contact [Redacted] to get assistance with the figures and he expected it would take some time to get the information. The Bureau allowed the taxpayer additional time, but when the taxpayer failed to respond to the Bureau's request for the additional information or the filing of an Idaho income tax return, the Bureau referred the matter for administrative review.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer failed to respond, so the Tax Commission sent him a follow up letter, but still the taxpayer failed to 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 year 2005 was \$2,500. Therefore, if the taxpayer realized a gain from the sale of the Idaho property in excess of \$2,500, he was required to file an Idaho income tax return.

The information available shows the taxpayer sold Idaho property for \$250,000. The taxpayer did not provide a basis for the property, so it is unknown what the taxpayer's gain was on the sale. Nevertheless, because the sales price is income to the taxpayer and it was in excess of the amount provided in Idaho Code section 63-3030, the taxpayer was required to file an Idaho income tax return.

The Bureau's determination was based on the sales price of the property. The Bureau allowed the taxpayer a personal exemption and the standard deduction for a single individual. The Bureau requested information [Redacted] regarding the taxpayer's [Redacted] income tax filing for 2005 but nothing was available. Therefore, the Bureau's determination was based solely on the sales price of the property.

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 did not provide any information to establish his basis in the property sold; he did not meet his burden. However, it is not reasonable to assume the taxpayer had no basis in the property, but without documentation to show the purchase price of the property, the Tax Commission is left to guess the taxpayer's basis. Since it is the taxpayer's responsibility to show his 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 taxpayer's basis. Therefore, the Tax Commission finds it appropriate to include the sales price of the property in the taxpayer's taxable income.

CONCLUSION

The Tax Commission found the Bureau's determination to be a reasonable representation of the taxpayer's Idaho taxable income based upon the information available. Therefore, the Tax Commission upholds the Bureau's determination.

THEREFORE, the Notice of Deficiency Determination dated February 3, 2010, is hereby, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER 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	\$18,578	\$4,645	\$5,680	\$28,903

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.