

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22783
[Redacted])	
)	DECISION
Petitioner.)	
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On February 9, 2010, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing additional income tax and interest for taxable year 2007 in the total amount of \$4,189. The petitioner filed a timely protest and petition for redetermination (Petition). The petitioner was informed of his appeal rights. The petitioner has not responded to the Commission’s appeal rights notification or provided additional information. The Commission, having reviewed the file, hereby issues its decision.

The petitioner reported gain from the sale [Redacted] on his 2007 Idaho income tax return in the amount of \$[Redacted] and claimed a \$48,134 Idaho capital gains deduction on said sales. The ITA disallowed the \$48,134 capital gains deduction since, according to the ITA, the gains on the sale of Internet domains are sales of intangible property that do not qualify for the Idaho Code section 63-3022H capital gains deduction.

The petitioner, in his Petition, argued that:

[Redacted]

Idaho Code section 63-3022H sets out the qualified property for the allowance of the Idaho capital gains deduction:

- (3) As used in this section “qualified property” means the following property having an Idaho situs at the time of sale:
 - (a) Real property held at least twelve (12) months;
 - (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue producing enterprise;

- (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty four (24) months if more than one half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
- (d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
- (e) Timber grown in Idaho and held at least twenty four (24) months;
- (f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the Internal Revenue Code shall apply, except that the holding period shall not include the holding period of property given up in an exchange, when such property would not have constituted qualified property under this section without regard to meeting the holding period.

No provision in Idaho Code section 63-3022H(3) provides for a capital gains deduction with regard to a gain from the disposition of an intangible asset. As for the sale of tangible personal property, the gain must be on tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise. Idaho Code section 63-3022H(3)(b). A "revenue producing enterprise" is defined in Idaho Code section 63-3022H(7) as:

- (7) As used in this section "revenue-producing enterprise" means:
 - (a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;
 - (b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;
 - (c) The feeding of livestock at a feedlot;
 - (d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

The petitioner has not provided any authority to show that the auditor's position in the NODD treating [Redacted] as intangible property was incorrect. Even if the petitioner could show that [Redacted] were tangible personal property, the petitioner's gain on the sale [Redacted] did not incur in a revenue-producing enterprise as that term is defined within the Idaho statute.

By the petitioner's own admission, he runs "[Redacted]." The buying and selling [Redacted] is not an enterprise that is in the production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product. Nor does it involve the storage, warehousing, distribution, or sale at wholesale of agriculture, mining, or manufacturing products. Similarly, the petitioner's business does not involve [Redacted] nor would it be considered as an [Redacted]. Accordingly, the ITA was correct in disallowing the capital gains deduction claimed on the sale [Redacted].

THEREFORE, the Notice of Deficiency Determination dated February 9, 2010, and directed to the petitioner is hereby AFFIRMED by this decision.

IT IS ORDERED that the petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$3,760	695	\$4,455

Interest is calculated through November 15, 2011, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

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.
