

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22829
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated March 8, 2010, asserting income tax, penalty, and interest in the total amount of \$49,681 for taxable years 2005, 2007, and 2008. The taxpayers stated they were unaware that they were required to file Idaho income tax returns and they disagreed with the computation of the gains on the sale of Idaho property they sold. 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 located in Idaho in 2005, 2007, and 2008. The Bureau researched the Tax Commission's records and found the taxpayers did not file Idaho individual income tax returns for those years. 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.

The Bureau sent the taxpayers letters asking them about the sales of the Idaho property and their requirement to file Idaho income tax returns. The taxpayers did not respond. The Bureau determined the taxpayers were required to file Idaho individual income tax returns, so it prepared returns for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination and subsequently provided copies of their federal income tax returns for 2005 and 2007. A [Redacted] of the taxpayers' 2008 return was provided in lieu of the taxpayers' actual return. The taxpayers also prepared and submitted Idaho income tax returns for all three years. The Bureau reviewed the taxpayers' returns and found that the taxpayers had rental property in Idaho that was not reported to Idaho and that the taxpayers reported only one of the three property sales on their [Redacted] income tax returns. The Bureau modified its original deficiency determination to include the information provided and sent the taxpayers the modified determination. The taxpayers still disagreed with the Bureau's determination, so the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond, so the Tax Commission decided the matter based upon the information available.

FINDINGS

The taxpayers owned and still own rental property in Idaho. The taxpayers received rental income in excess of the Idaho filing requirements for nonresidents as provided in Idaho Code section 63-3030. The taxpayers also sold Idaho property in each of the years 2005, 2007, and 2008. The taxpayers were required to file Idaho individual income tax returns.

On the taxpayers' [Redacted] income tax return for taxable year 2005, the taxpayers reported losses on their rental property and a gain on the sale of Idaho property. The Idaho income tax return the taxpayers submitted had the same information. Upon review of the taxpayers' 2005 Idaho return the Bureau found that the sale of the Idaho property met the requirements for the Idaho capital gains deduction. Therefore, the Bureau corrected the

taxpayers' 2005 return to allow the Idaho capital gains deduction. The Tax Commission reviewed the taxpayers' 2005 Idaho return with the Bureau's correction and found it to be an accurate representation of the taxpayers' 2005 Idaho taxable income.

The taxpayers' 2007 [Redacted] and Idaho income tax returns did not include the sale of Idaho property in that year. The taxpayers did, however, report a loss from rental activities in Idaho. The taxpayers sold property in Idaho in 2007 with a sales price of \$159,900. The taxpayers did not provide any information to establish their basis in the property sold; therefore, the Bureau included the selling price of the property in the taxpayers' income. It is not reasonable to assume the taxpayers had no basis in the property; however, without documentation to show the purchase price of the property, 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. Therefore, the Tax Commission finds it appropriate to include the sales price of the property in the taxpayers' taxable income.

The Idaho return the taxpayers provided for 2008 reported rental losses as the only item reportable to Idaho. The taxpayers did not report the sale of Idaho property. The taxpayers provided a copy of their [Redacted] for 2008 showing what they reported [Redacted] that year. The [Redacted] did not show the property sale in 2008. The [Redacted] did reveal that the taxpayers claimed the entire Schedule E loss as attributable to Idaho. Comparing the taxpayers' 2008 [Redacted] with the taxpayers' [Redacted] income tax returns for 2007 and 2005, it is clear the loss the taxpayers reported for 2008 includes losses other than their rental losses from Idaho. The taxpayers had a flow-through loss from a partnership or S-corporation that was not Idaho

source income, and they had rentals [Redacted]. The Bureau, in its determination, did not allow any losses from the taxpayers' 2008 Schedule E. This determination was based upon a lack of documentation to show exactly how much of the loss was attributable to Idaho. However, based upon the information available on the [Redacted], and considering the information on the taxpayers' 2005 and 2007 federal returns, the Tax Commission determined the taxpayers' loss from their Idaho rentals was \$16,695.

As previously stated, the taxpayers did not report the sale of Idaho property in 2008 nor did they provide any information on the sale of the property. Therefore, the Tax Commission agrees that the sales price of the property should be included as part of the taxpayers' Idaho taxable income.

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

WHEREFORE, the Notice of Deficiency Determination dated March 8, 2010, 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	\$ 10	\$ 10	\$ 3	\$ 23
2007	4,047	1,012	690	5,749
2008	2,965	741	315	4,021
			LESS REMITTANCE	(23)
			BALANCE DUE	<u>\$9,770</u>

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.