

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22856
)
)
Petitioners.) DECISION
)
_____)

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated March 5, 2010, asserting income tax, penalty, and interest in the total amount of \$9,579 for taxable year 2005. The taxpayers disagreed with the computation of the gain on the sale of Idaho property they 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 taxpayers sold real property located in Idaho in 2005. The Bureau researched the Tax Commission’s records and found the taxpayers did not file an Idaho individual income tax return for that year. The Bureau sent the taxpayers letters asking them about the sale of the Idaho property and their requirement to file an Idaho income tax return. The taxpayers did not respond to the Bureau’s letters, so the Bureau reviewed the information available, determined the taxpayers were required to file an Idaho income tax return, prepared a return for the taxpayers, and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau’s determination and provided a copy of their closing statement on the sale of the property. The taxpayers stated that, based upon the documentation provided, the Bureau’s determination was not valid. The Bureau determined the taxpayers’ documentation was incomplete and requested additional documentation to support the taxpayers’

basis and qualification for the Internal Revenue Code section 121 exclusion. The taxpayers failed to respond to the Bureau's inquiry. Therefore, 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.

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 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 taxpayers realized income on the sale of the Idaho property in excess of \$2,500, they were required to file a 2005 Idaho income tax return.

In 2005, the taxpayers sold property in Idaho with a sales price of \$112,000. This information was provided via a 1099S informational return and confirmed in the documents provided by the taxpayers. The taxpayers' documentation also showed the taxpayers incurred selling costs and payoffs of first and second mortgages. The taxpayers would like the Tax Commission to believe there was no gain on the sale because they had to pay out money on the sale. However, paying funds in the closing on the sale of property does not necessarily mean there was no gain on the sale.

The Bureau's determination of the taxpayers' income was based solely upon the sales price of the property sold. The Bureau did not account for any 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 taxpayers 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 taxpayers did not establish their basis in the property sold; they have not met their burden of proof. However, it is not reasonable to assume the taxpayers had no basis in the property, but without documentation to show the purchase price of the property and the cost of any improvements, the Tax Commission is left to guess at the taxpayers' basis.

In this case, the taxpayers' documentation included a copy of the Seller's Escrow Closing Statement. On that statement is an entry for the payoff of first and second mortgages. Although mortgages do not substantiate basis in a property, they are a starting point when no other information is available. Deductions are a matter of legislative grace, and 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 information available shows the taxpayers resided at the property location for less than a year. Considering this, the Tax Commission finds it reasonable that the first mortgage payoff amount is part of the taxpayers' basis in the property. Therefore, the Tax Commission adjusted the Bureau's gain computation to include a basis amount of the first mortgage and the other allowable closing costs paid by the taxpayers.

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 taxpayers. The Bureau also assumed the taxpayers were nonresidents of Idaho in 2005. The taxpayers did not argue their resident status, but it is quite possible they were part-year residents in 2005. Nevertheless, without evidence to the contrary, the Tax Commission upholds the Bureau's determination of the taxpayers' residency status. However, in its computation of the taxpayers' Idaho taxable income, the Bureau 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 [Redacted] regarding the taxpayers' federal adjusted gross income but did not use that information in its computation of the taxpayers' Idaho taxable income. Therefore, the Tax Commission modified the Bureau's return to incorporate the provisions of Idaho Code section 63-3026A.

CONCLUSION

The taxpayers received income from an Idaho source; the sale of Idaho property. The taxpayers provided information to establish the cost of the sale and an implied basis. The Tax Commission finds the costs of the sale appropriate in reducing the amount of gain realized on the sale of the property. The Tax Commission also finds it reasonable to allow the taxpayers a basis in the property as stated above. The Tax Commission further finds the taxpayers' Idaho taxable income should be determined in accordance with the provisions of Idaho Code section 63-3026A.

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

THEREFORE, the Notice of Deficiency Determination dated March 5, 2010, and directed to [Redacted] is MODIFIED in accordance with the provisions of this decision, and as so MODIFIED is AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$539	\$135	\$172	\$846

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.
