

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22942
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated March 25, 2010, asserting additional Idaho income tax, penalty, and interest for taxable year 2005 in the total amount of \$20,686.

The issue in this docket is whether the taxpayers met the requirements of Internal Revenue Code (IRC) § 121 which allows exclusion of gain from the sale of principal residence.

BACKGROUND FACTS

The taxpayers sold real property for \$380,000 in [Redacted], Idaho, on May 4, 2005. The taxpayers did not file an Idaho income tax return for 2005. They did not report any capital gains from the sale of the property on their 2005 [Redacted] income tax return. The taxpayers purchased the real property in August 2000 for \$178,000.

The taxpayers protested the entire amount in the Notice of Deficiency Determination claiming that they qualified for an exclusion under Internal Revenue Code (IRC) § 121. The taxpayers claimed that the condominium was occupied as a primary residence by the taxpayers aggregating in excess of two years during the five years prior to the sale. No Idaho income tax returns were filed for any years prior to the sale. On page 2 of the taxpayers protest, they state that “[r]eal estate taxes were paid as non-residents.” The taxpayers state on page 3 of their protest that during the time they owned the Idaho property “[Redacted].” The taxpayers have not provided evidence to substantiate that either one of them used the Idaho property as their principal residence

during any part of the time that they owned the property.

The taxpayers did provide documentation which showed the sales price, sales costs, and purchase price of the property.

LAW AND ANALYSIS

The Internal Revenue Code allows a taxpayer to exclude up to \$250,000 of gain (or up to \$500,000 for married joint filers) from the sale of a principal residence if they meet the requirements of IRC § 121. IRC § 121(a) provides:

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

The federal regulations provide details for the two year use requirement. 26 CFR 1.121-1(c) states:

(1) In general. The requirements of ownership and use for periods aggregating 2 years or more may be satisfied by establishing ownership and use for 24 full months or for 730 days (365×2). The requirements of ownership and use may be satisfied during nonconcurrent periods if both the ownership and use tests are met during the 5-year period ending on the date of the sale or exchange.

(2) Use. (i) In establishing whether a taxpayer has satisfied the 2-year use requirement, occupancy of the residence is required.

The federal regulations provide further definition of the term "principal residence" for purposes of this code section. 26 CFR 1.121-1(b)(2) states:

In the case of a taxpayer using more than one property as a residence, whether property is used by the taxpayer as the taxpayer's principal residence depends upon all the facts and circumstances. If a taxpayer alternates between 2 properties, using each as a residence for successive periods of time, the property that the taxpayer uses a majority of the time during the year ordinarily will be considered the taxpayer's principal residence. In addition to the taxpayer's use of the property, relevant factors in determining a taxpayer's principal residence, include, but are not limited to—

- (i) The taxpayer's place of employment;
- (ii) The principal place of abode of the taxpayer's family members;
- (iii) The address listed on the taxpayer's federal and state tax returns, driver's

- license, automobile registration, and voter registration card;
- (iv) The taxpayer's mailing address for bills and correspondence;
- (v) The location of the taxpayer's banks; and
- (vi) The location of religious organizations and recreational clubs with which the taxpayer is affiliated.

The taxpayers are not entitled to the IRC § 121 exclusion. The taxpayers in this case have asserted that they satisfied the requirements of IRC § 121, but have not provided any evidence to establish that either one of them used the Idaho property as their principal residence for a total of two years during the five years preceding the sale.

The gain on the sale of the Idaho property is taxable income to the taxpayers. Selling costs and the cost basis have been subtracted from the sales price in computing the taxpayers gain on the sale of \$177,461.25. Because the taxpayers held the Idaho property for more than one year, they qualify for the 60 percent capital gains deduction of Idaho Code § 63-3022H.

CONCLUSION

WHEREFORE, the Notice of Deficiency Determination dated March 25, 2010, is hereby MODIFIED 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 (computed to March 3, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>PENALTY</u>	<u>TOTAL</u>
2005	\$4,787	\$1,385	\$1,197	\$7,369

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 _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.
