

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 23162  
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Petitioners. ) DECISION  
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\_\_\_\_\_ )

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated May 18, 2010, asserting income tax, penalty, and interest in the total amount of \$4,709 for taxable year 2006. The taxpayers disagreed with the computation of the gain on the sale of Idaho property they sold in 2006. 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 2006. 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 Idaho income tax returns. 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 stating the sale of the property was a 1031 exchange through a qualified intermediary. The taxpayers also questioned whose burden it was to prove that this transaction qualified as a 1031 exchange. The Bureau requested additional

information from the taxpayers but failed to receive anything. 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

In 2006, the taxpayers sold property in Idaho with a sales price of \$59,900. This information was provided via a 1099S informational return. 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 taxpayers stated the sale was an exchange of property that qualified as a section 1031 exchange. Internal Revenue Code (IRC) section 1031 provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment. IRC section 1031 provides that certain requirements be met for the sale or exchange to receive the non-recognition treatment. The taxpayers questioned whose burden of proof it was to show that the sale met the requirements of IRC section 1031.

The Commissioner's determination of a taxpayer's liability for an income tax deficiency is generally presumed correct, and the taxpayer bears the burden of proving that the determination is improper. See Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933). However, pursuant to section 7491(a)(1), the burden of proof on factual issues that affect the taxpayer's tax liability may be shifted to the Commissioner where the taxpayer introduces credible evidence with respect to \*

\* \* such issue.’ The burden will shift only if the taxpayer has, inter alia, complied with substantiation requirements pursuant to the Code and ‘cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews’. Sec. 7491(a)(2). Petitioners did not argue that the burden should shift, and they failed to introduce credible evidence that respondent's determinations are incorrect. Accordingly, the burden of proof remains on petitioners.

Ledger v. CIR, T.C. Memo 2011-183 (2011).

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 have not provided anything to show the Bureau’s determination is incorrect.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2006 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.

The Bureau’s determination of the taxpayers’ income was based solely upon the sales price of the property sold. The taxpayers sold their Idaho property for \$59,900. The Bureau did not allow for any basis the taxpayers may have had in the property. Since the taxpayers failed to provide anything other than their unsubstantiated statements referencing a 1031 exchange, they have not met their burden of proof. However, it is not reasonable to assume the taxpayers had no basis in the property sold, but without documentation to show the purchase price and the cost of any improvements the Tax Commission is left to guess at 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 at the taxpayers' basis.

CONCLUSION

The taxpayers sold Idaho property that could have produced Idaho source income. The taxpayers failed to substantiate their basis in the property sold, so the gain on the sale is indeterminable. Therefore, the Tax Commission finds it appropriate to include the sales price of the property in the taxpayers' Idaho taxable income.

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 May 18, 2010, and directed to [Redacted] is AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$3,252	\$813	\$833	\$4,898

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.

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