

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23170
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated May 18, 2010, asserting additional liabilities for Idaho income tax, penalty, and interest in the total amount of \$41,976 for 2007.

The only issue in this docket is whether the gain from the sale of a portion of a [Redacted], as consummated by the petitioners, is eligible for the Idaho capital gains deduction. The auditor considered the sale to be that of a partnership interest, an intangible, which would not be eligible for the deduction sought. The petitioners contend that it was the sale of the underlying physical assets, some of which might be qualifying property as prescribed by the Idaho Code § 63-3022H which stated [2007], in part:

- Deduction of capital gains. (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.
- (2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.
- (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;

* * *

- (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 LIMITED LIABILITY COMPANY INTEREST PURCHASE AGREEMENT stated in part, the following:

B. Sellers¹ collectively own 100% of the outstanding professional limited liability company interest of Company, and Sellers desire to sell 60% of Sellers' ownership interests in Company to Purchaser as set forth herein.

* * *

F. Seller Affiliates join in the execution of this Agreement to, among other things, acknowledge and agree that Seller Affiliates are the beneficiaries of the receipt by certain Sellers of the Purchase Price.

NOW THEREFORE, in consideration of the mutual representations, warranties, and covenants herein contained, the Parties, intending to be legally bound, agree as follows:

1. **Purchase and Sale of Interests.** On the terms and subject to the conditions set forth in this Agreement, Sellers agree to and will sell, transfer, assign, and deliver to Purchaser at the Closing (to be effective as of the Effective Date), free and clear of all liens, pledges, encumbrances, claims, and charges of every kind, and Purchaser agrees to and will purchase and accept from Sellers,

¹ One of the "Sellers" was [Redacted].

on the terms and subject to the conditions set forth in this Agreement and in the manner specified in Section 3.3, the Interests, constituting 60% of all the outstanding limited liability company interests of Surviving Company.

* * *

12.4 Entire Agreement. This Agreement, the Exhibits and Schedules attached hereto, and the other Transaction Documents contain the entire agreement of the Parties with respect to the purchase of the Interests and the other transactions contemplated herein and therein and supersede all prior understandings and agreements of the Parties with respect to the subject matter hereof, including, without limitation, that certain letter of intent from [Redacted] to the members of company dated October 6, 2006. Any reference here to this Agreement shall be deemed to include the Schedules and Exhibits attached hereto. (Emphasis in original.)

The petitioners contend that “a portion of the sale price was specifically related to [Redacted] by [Redacted].” The petitioners, however, did not direct the Commission to the portion of the Agreement which supports this position nor was any authority cited by the petitioners to support attributing a portion of the sales price to the sale of particular tangible assets. Also, if the petitioners are contending that the underlying assets were sold, presumably there should be recapture of depreciation shown from the sale of the assets. No such recapture was reported.

The Commission has held on several occasions that the sale of a partnership interest is not the same as the sale of the underlying assets. This is also true for the property of the limited liability company. Idaho Code § 56-633 stated:

Ownership of limited liability company property. – (1) Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.

Due to this provision, the only interest Mr. [Redacted] held in the property sold was the interest in the limited liability company.

Even if Mr. [Redacted] had held the property directly, it appears to the Commission that none of the gain would have qualified for the Idaho capital gains deduction. For the tangible personal property to have qualified for this deduction, it would have been required to have been used in a "revenue producing enterprise" as defined in Idaho Code § 63-3022H(7) (above), and it appears that it was not so used.

THEREFORE, the Notice of Deficiency Determination dated May 18, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to December 31, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$34,199	\$3,420	\$6,494	\$44,113

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

An explanation of the petitioners' 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.
