

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23580
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated September 29, 2010, asserting income tax, penalty, and interest in the total amount of \$30,913 for taxable years 2006 and 2008. The taxpayers disagreed with the computation of the gain on the sales of Idaho property they sold in those years. 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 both 2006 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. The Bureau sent the taxpayers letters asking about the sales 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 Idaho income tax returns, prepared returns for the taxpayers, and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination and questioned the Bureau's inquisition into the sales. The Bureau informed the taxpayers that the sale of Idaho property is Idaho source income and any gain on the sale is taxable by Idaho. The taxpayers stated they needed time to gather their documentation to establish their basis in the properties. The Bureau allowed the

taxpayers the additional time. Some time later, the taxpayers contacted the Bureau and stated they had their documentation, but their scanner was not working. The taxpayers asked for a little more time so they could send the documentation through the mail. The Bureau allowed the time, but when no documents were received and the taxpayers stopped communicating with the Bureau, 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 reviewed the information available and decided the matter.

#### 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. In 2006 and 2008, the taxpayers sold property in Idaho with sales prices of \$209,900 and \$132,500, respectively. This information was provided via 1099S informational returns.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable years 2006 and 2008, the threshold amount for filing a nonresident return was \$2,500. Therefore, if the taxpayers realized income on the sales of the Idaho property in excess of \$2,500, they were required to file Idaho income tax returns.

The Bureau's determination of the taxpayers' income was based solely upon the sales price of the properties sold. The Bureau did not account for a basis in the properties.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer 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 provide any information to establish their basis in the properties sold; therefore, the Bureau included the selling price of the property in the taxpayers' income. While it is not reasonable to assume the taxpayers had no basis in the property, it is likewise unreasonable for the Tax Commission to determine a basis without some sort of documentation. Without documentation, 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. Therefore, the Tax Commission finds it appropriate to include the sales price of the properties in the taxpayers' taxable income.

#### CONCLUSION

The taxpayers received income from an Idaho source; the sale of Idaho property. But since the taxpayers failed to substantiate their basis in the property sold, the gain on the sale is undeterminable. 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 September 29, 2010, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED 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>
2006	\$13,944	\$3,486	\$3,699	\$21,129
2008	7,848	1,962	1,030	<u>10,840</u>
			TOTAL DUE	<u>\$31,969</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

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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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