

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 23620 |
| [Redacted], |) | |
| |) | |
| Petitioners. |) | DECISION |
| _____ |) | |

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated April 14, 2010, asserting additional liabilities for Idaho income tax, penalty, and interest in the total amount of \$16,389 for 2006.

[Redacted] was a member of an LLC. All of the issues in this appeal have to do with this membership. The issues are as follows:

1. Whether the gain from the sale of real property by the LLC should be classified as capital gain or ordinary income, and
2. The proper amount of the loss from the liquidation of Mr. [Redacted] membership in the LLC.

In a decision issued concurrently with this decision, the Commission found that the income from the sale of real property by the LLC was ordinary income. Determination of whether such income is capital gain or ordinary income is determined at the partnership level. Podell v. Commissioner, 55 T.C. 429, (1970). This is dispositive of this issue.

The petitioners claimed a loss on the disposition of the interest in the partnership in the amount of \$31,207. This is based on having received nothing for the interest and having a basis of \$31,207. The auditor determined that the basis was \$13,568, as this was shown on the K-1 from the partnership the petitioners' capital balance. The petitioners have not established a basis

different from that determined by the Auditor. Accordingly, the adjustment made by the auditor is AFFIRMED.

WHEREFORE, the Notice of Deficiency Determination dated April 14, 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):

| YEAR | TAX | PENALTY | INTEREST | TOTAL |
|------|----------|---------|----------|----------|
| 2006 | \$12,677 | \$1,268 | \$ 3,295 | \$17,240 |

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.
