

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23628
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) and dated October 19, 2010. The Notice of Deficiency Determination asserted additional Idaho income tax, penalty, and interest in the total amount of \$10,486 for 2007.

The issue is whether gain from the disposition of real property located in another state, equipment apparently related to a motel or hotel in another state, and goodwill qualify for the Idaho capital gains deduction pursuant to Idaho Code § 63-3022H.

Idaho Code § 63-3022H stated, in part:

- (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 petitioners make no argument and cite no authority to support their position that the property in question was “qualified property” pursuant to Idaho Code § 63-3022H. In addition, the petitioners presented no authority or argument with regard to any of the additions to tax. The petitioners did not request a hearing. The Commission now decides this case based upon the information in the file.

It appears from the information in the file that both the real and personal property in question were located outside the state of Idaho at the time of the disposition of the property. This alone disqualifies the property from being “qualified property.” Goodwill, being an intangible, does not fall within any category set out as “qualifying property” in Idaho Code § 63-3022H(3). In any case, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms. New Colonial Ice Company Inc. v. Helvering, 295 U. S. 435, 440 (1934). The petitioners have failed to carry their burden in this matter.

THEREFORE, the Notice of Deficiency Determination dated October 19, 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 September 30, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$8,074	\$1,211	\$1,452	\$10,737

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.