

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23713
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (Petitioners) protest the Notice of Deficiency Determination dated December 9, 2010, asserting additional taxes and interest totaling \$460, \$450, and \$160 for 2007, 2008, and 2009, respectively. A timely protest was filed, and the petitioners did not request a hearing.

The petitioners filed Idaho resident income tax returns for all relevant years. On these returns, the petitioners reported income from the sale of [Redacted] equipment and claimed the Idaho capital gains deduction with regard to the gains from these sales.

The only issue is whether the petitioners are entitled to the Idaho capital gains deduction with regard to the gains from the sales of the [Redacted] equipment. The auditor disallowed the deductions claiming that the business was not a “revenue producing enterprise as defined in Idaho Code § 63-3022H(3)(b) which states that “qualified property” includes:

Tangible personal property used in Idaho for at least twelve (12) months by a revenue producing enterprise;

“Revenue producing enterprise” is defined in Idaho Code § 63-3022H(4):

- 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. (Underlining added.)

The petitioners contend that their business was a “revenue producing enterprise.” The business in

question involved the processing of film and the production of photographs.

Idaho Income Tax Administrative Rule 172 further addresses a “revenue producing enterprise.” It stated, in part:

IDAHO CAPITAL GAINS DEDUCTION -- REVENUE-PRODUCING ENTERPRISE (RULE 172).

Section 63-3022H, Idaho Code.

01. In General. Only the activities listed in Section 63-3022H(7), Idaho Code, qualify as a revenue-producing enterprise. A revenue-producing enterprise does not include retail sales, professional, managerial, or repair services. (Underlining added.)

The petitioners contend that their business consisted of both retail and wholesale business. However, upon reviewing the sales tax returns filed on behalf of their corporation, we find no wholesale sales reflected in any of the years in question. Accordingly, the Commission finds the business engaged in by the S corporation owned by the petitioners was a retail business not qualifying as a “revenue producing enterprise” as provided by Idaho Code § 63-3022H. Accordingly, the Commission finds that the auditor’s position should be affirmed.

THEREFORE, Notice of Deficiency Determination dated December 9, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest (computed to August 15, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$398	\$70	\$ 468
2008	412	46	458
2009	154	9	<u>163</u>
		TOTAL DUE	<u>\$1,089</u>

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.
