

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23734
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

BACKGROUND

[Redacted] (Taxpayer) is a [Redacted] resident. In taxable year 2006, Taxpayer sold real property located in the state of Idaho. The Idaho State Tax Commission (Commission) received a Form 1099-S from the title company used by Taxpayer to facilitate the sale. The 1099-S indicated a sales price of \$3,960,000. Taxpayer did not file an Idaho tax return to report any income he may have received from that sale.

The Commission sent Taxpayer a request for information on August 26, 2011, to better ascertain whether or not Taxpayer would be required to file an Idaho state tax return. The Commission requested Taxpayer provide his federal tax return or a written explanation as to why he would not be required to file an Idaho state tax return. In response, Taxpayer submitted 4 informational [Redacted] and 11 other document packages, all of which purported to prove Taxpayer was relieved of any federal or state filing requirements. The Commission received these submissions and included the documents in the file; however, none of these submissions included information specific to the sale of the real property at issue.

On November 12, 2010, the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to Taxpayer asserting income tax, penalties, and interest for the 2006 taxable year. The deficiency amounted to \$453,743 and was based solely on the relevant information provided to the Tax Commission by the title company.

On January 14, 2011, the Commission received a letter from Taxpayer wherein Taxpayer asserted the illegality of the tax, penalties, and interest asserted against him. Taxpayer did not request an informal conference to discuss the issue. Rather, he relied upon his previously produced exhibits to support his theory that he was not required to file federal or state returns. Therefore, he did not owe the tax indicated by the Commission.

The Commission has reviewed the relevant information contained in this file, is advised of its contents, and now issues its decision. For the reasons set forth below, the Commission affirms the NODD issued on November 12, 2010, with interest updated through February 24, 2012.

ANALYSIS

This is a nonfiler case. Taxpayer did not file an Idaho income tax return for the 2006 taxable year. Based on information submitted to the Commission from the title company used by Taxpayer to sell the real property in Idaho, Taxpayer did in fact have an Idaho income tax filing requirement for taxable year 2006.

Taxpayer believes he is not required to file or pay federal and Idaho income taxes based on numerous frivolous arguments. Those arguments contained in the protest letter specific to his requirement to pay Idaho tax include 1) taxation on income violates the Fifth Amendment as a taking of private property without just remuneration, therefore, income from the sale of real property is an improper "property tax," 2) penalties assessed without an adjudication from an authorized court is illegal and improper based on the separation of authority, and 3) interest cannot be applied against penalties or any amount owed without a court first adjudicating the issues surrounding the original liability.

The Commission is not persuaded. The arguments made by Taxpayer are not supported by any appropriate legal authority. Taxpayer has not convinced the Commission that he is somehow immune from his legal obligation to file an Idaho income tax return and to pay his taxes.

Courts have examined and uniformly rejected the argument that the collection of income tax constitutes a “taking” of property without due process of law in violation of the Fifth Amendment. Notably, the United States Supreme Court stated in Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916), “it is ...well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power, and taking the same power away on the other by limitations of the due process clause.”

The Idaho Constitution expressly authorizes the actions taken by the Commission, including the assessment of a tax deficiency, interest, and penalties. Section 12, article VII of the Idaho Constitution provides the Commission shall have such powers to perform duties prescribed by law. The statutory authority for the Commission to issue an NODD and to charge interest on deficiencies in tax is found in Idaho Code § 63-3045. Additionally, Idaho Code § 63-3046 provides the statutory authority for the Commission to assess penalties on tax deficiencies.

The Idaho income tax return filing requirements are set out in Idaho Code § 63-3030. Specifically, Idaho Code § 63-3030(a)(2) sets forth the filing requirements for individuals who are nonresidents of the state of Idaho. Nonresidents with a gross income from Idaho sources in excess of two thousand five hundred dollars (\$2,500) are required to file an Idaho individual income tax return. Idaho Code § 63-3026A(3)(a)(ii) further clarifies that income from Idaho sources includes gains received on the disposition of any interest in real property located within

Idaho. Finally, individuals required to file an Idaho income tax return must pay Idaho income tax on their taxable income at the rates set forth in Idaho Code § 63-3024.

The record before the Commission reveals that Taxpayer was a nonresident of Idaho during taxable year 2006 and received income from Idaho sources during that year. Under Idaho's tax laws, Taxpayer was required to file an Idaho individual income tax return and pay Idaho income tax on the gains received from the sale of the real property. In addition to the tax liability shown due on the NODD, the Commission added interest and penalties to Taxpayer's Idaho tax liability in accordance with Idaho Code §§ 63-3045 and 63-3046.

CONCLUSION

Taxpayer failed to present any information to dispute the factual basis of the NODD. It is well settled in Idaho that an NODD issued by the Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. Id. Aside from Taxpayer's legal challenges discussed above, Taxpayer has not contested the amount of tax, penalty, or interest determined to be deficient.

WHEREFORE, the NODD dated November 12, 2010, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that Taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$308,100	\$77,025	\$81,915	\$467,041

Interest for the above deficiency is calculated through February 24, 2012.

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

An explanation of the taxpayer's 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.
