

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24056
)
)
Petitioner.) DECISION
)
_____)

On March 28, 2011, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional income tax and interest for taxable year 2007 in the total amount of \$963.

On May 27, 2011, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Commission’s hearing rights letter and has provided nothing further for the Commission to consider. The Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 2007 Idaho individual income tax return. The taxpayer reported the sale of real property on his [Redacted] income tax return. This sale was also reported on the taxpayer’s Idaho income tax return. The taxpayer claimed the Idaho capital gains deduction and excluded 60 percent of the gain on the sale.

The taxpayer’s 2007 return was selected for review of the Idaho capital gains deduction by the Income Tax Audit Bureau (Bureau). The taxpayer reported the sale on Schedule D and listed the date acquired as February 16, 2007, and the date sold as May 10, 2007. The Bureau adjusted the taxpayer’s Idaho return disallowing the Idaho capital gains deduction. The Bureau explained the adjustment stating that the property did not qualify for the Idaho capital gains

deduction because the property did not meet the holding period. The Bureau sent the taxpayer an NODD, which the taxpayer protested.

The taxpayer stated he spent a significant amount of money to renovate the property before he sold it and should not owe any additional taxes.

The Bureau referred the matter for administrative review. The Commission sent the taxpayer a letter that discussed the issue and gave him two methods for redetermining the NODD, if he still disagreed with the audit adjustment. The taxpayer did not respond. Therefore, the Commission decided the matter based upon the information available.

Idaho Code section 63-3022H provides for a 60 percent deduction of the capital gain net income from the sale or exchange of qualified property in the determination of taxable income. In the case of the sale of real property, the property must be Idaho property and held by the taxpayer for at least 12 months. Other types of property also qualify for the deduction, but they are of no consequence to the matter at hand.

The property the taxpayer sold was, according to the dates listed on the taxpayer's federal income tax return, Schedule D, was held by the taxpayer for 84 days. Therefore, it does not meet the minimum 12-month holding period requirement. The property does not qualify for the Idaho capital gains deduction as stated in Idaho Code section 63-3022H.

The Commission upholds the adjustment to the taxpayer's 2007 Idaho individual income tax return.

THEREFORE, the Notice of Deficiency Determination dated March 28, 2011, and directed to [Redacted], is hereby AFFIRMED.

IT IS ORDERED that the taxpayer pay the following tax, penalty, and interest:

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL DUE</u> |
|-------------|------------|----------------|-----------------|------------------|
| 2007 | \$790 | \$40 | \$150 | \$980 |

Interest is computed to December 20, 2011.

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.