

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 22555
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	
	)	
_____	)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination dated October 28, 2009, asserting income tax, penalty, and interest in the total amount of \$11,784 for taxable year 2004. The taxpayers disagreed with the computation of the gain on the sale of their Idaho property. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayers sold real property located in Idaho in 2004. The Bureau researched the Tax Commission's records and found the taxpayers did not file an Idaho individual income tax return for that year. The Bureau sent the taxpayers letters asking about the sale of their Idaho property and their requirement to file an Idaho income tax return. The taxpayers did not respond to the Bureau's letters, so the Bureau reviewed the information available, determined the taxpayers were required to file an Idaho income tax return, prepared a return for the taxpayers, and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination and made a payment of \$2,000 toward their Idaho tax liability. The taxpayers stated they were gathering their records and would send copies to the Tax Commission. The Bureau acknowledged the taxpayers' protest and allowed the taxpayers the additional time to provide their documentation. However, after a significant amount

of time passed with no documentation or contact from the taxpayers, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers did not respond to the Tax Commission's initial letter or its follow-up letter, so the Tax Commission reviewed the information available and decided the matter.

### LAW AND ANALYSIS

Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho. In 2004, the taxpayers sold property in Idaho with a sales price of \$118,000. This information was provided via a 1099S informational return.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2004, the threshold amount for filing a nonresident return was \$2,500. Therefore, if the taxpayers realized income on the sale of their Idaho property in excess of \$2,500, they were required to file an Idaho income tax return.

The Bureau's determination of the taxpayers' income was based solely upon the sales price of the property sold. The Bureau did not account for a basis in the property.

In Idaho, a Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayers did not provide any information to establish their basis in the property sold; therefore, the Bureau included the selling price of the property in the taxpayers' income. While it is not

reasonable to assume the taxpayers had no basis in the property, it is likewise unreasonable for the Tax Commission to determine a basis without some sort of documentation. Without documentation, the Tax Commission can only guess at the taxpayers' basis. Since it is the taxpayers' responsibility to show their entitlement to a deduction (INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S. Ct. 788, 78 L. Ed. 1348 (1934)), the Tax Commission will not accommodate the taxpayers and assign a basis. Nevertheless, the taxpayers did receive income on the sale of the property; therefore, because of the lack of better information, the Tax Commission agrees with the inclusion of the sales price of the property in the taxpayers' taxable income.

#### CONCLUSION

The taxpayers received income from an Idaho source; the sale of Idaho property. The taxpayers failed to substantiate their basis in the property sold; therefore, the gain on the sale is undeterminable. Since the taxpayers received Idaho source income, and that income exceeded the threshold for filing a nonresident Idaho income tax return, the Tax Commission finds the taxpayers were required to file an Idaho income tax return. The Tax Commission also found that the return prepared by the Bureau was appropriate based upon the information available. Therefore, the Tax Commission upholds the Bureau's determination.

The Bureau added interest and penalty to the taxpayers' Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate. See Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated October 28, 2009, and directed to [Redacted] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$7,634	\$1,909	\$3,003	\$12,546
			PAYMENT	<u>2,000</u>
			TOTAL DUE	<u>\$10,546</u>

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 \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.

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