

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22627
)
)
Petitioners.) DECISION
_____)

HISTORY

The Idaho State Tax Commission’s Income Tax Audit Bureau (Audit) received an Internal Revenue Service Form 1099-S stating that [Redacted], a [Redacted] resident, sold Idaho real property on September 19, 2005. After several failed attempts to communicate with, and request documentation from, the Taxpayer, on January 26, 2010, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Taxpayers) in the amount of \$14,721, being \$9,846 in taxes, a \$2,462 penalty, and \$2,413 in interest for 2005 Idaho individual income tax based on the full amount of gross proceeds listed on the Form 1099-S.

On February 24, 2010, the Commission received a previously requested 2005 federal income tax return from the Taxpayers. Although this return did not report the sale of the involved property, its receipt was considered by the Commission to be a protest of the NODD, and a letter acknowledging this was sent to the Taxpayers on the same day. On April 6, 2010, a warranty deed was received, but it was for a property purchased after the sale of the subject property.

A Power of Attorney form for a [Redacted] (POA) was received by the Commission on June 9, 2010. Throughout the remainder of taxable year 2010 and for all of taxable year 2011, sporadic communications continued between the POA and Audit, and then the Commission’s

Legal and Tax Policy Division (Legal). Through this communication, the Commission learned that the Mr. [Redacted] parents gifted him the subject property in [Redacted], which they lived in at the time. The Taxpayers subsequently sold the [Redacted], realizing substantial gain, and used the proceeds from the sale to buy a property in [Redacted], Idaho, which Mr. [Redacted] parents now live in. The POA argues that there is no taxable gain on the sale of the [Redacted] property because the Taxpayers reinvested the proceeds into the [Redacted] property. However, the POA has never identified any authority for that argument.

After further exchange of information with the POA about the [Redacted] property which is the subject of this case. Legal recognized an increased basis in the property and communicated to the POA an adjustment in the amount of Idaho income tax due from the Taxpayers for taxable year 2005 to \$3,026, being \$1,944 in tax, \$486 in penalty, and \$596 in interest calculated through August 15, 2011.

In an email dated January 4, 2012, from the POA, the Taxpayers offered to settle the case by paying the amount due as of August 15, 2011, in 10 monthly installments. On January 17, 2012, after conferring with the appropriate Commissioner, Legal emailed back acceptable terms to the POA, and outlined options other than settlement. The Commission has had no further communication with the POA or Taxpayers and now moves forward with this decision.

DISCUSSION

The issue in this case is whether the gain from the sale of the Taxpayers' [Redacted] property is taxable as Idaho income. Idaho taxable income for a non-resident, such as the

Taxpayer, is defined by Idaho Code § 63-3026A as income “derived from or related to sources within Idaho.” Section 3(a) of that code further states, in pertinent part:

- a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:
 - (ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

Without further exemption or adjustment, the gain from the sale of the [Redacted] property is clearly Idaho taxable income. The POA and Commission have discussed two legal conduits to exclude the type of gain the Taxpayers realized on the sale of the [Redacted] property, but neither apply in this case. The first is under Internal Revenue Code (IRC) § 1031 which governs the like-kind exchange of properties. The POA correctly eliminates the possibility of this case involving an IRC § 1031 exchange because there was no qualified intermediary involved in the property exchange. The second is under IRC § 121 governing exclusion of gain from the sale of a principal residence. This code section is not pertinent in this case because the Taxpayers never used the [Redacted] property as their principal residence.

Courts in Idaho have determined that an NODD issued by the Idaho State Tax Commission is presumed to be correct, and the burden is on the taxpayer to show that the tax deficiency is erroneous. 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). While the POA has argued in general terms that the taxation of the gain realized on the sale of the [Redacted] property was somehow unfair, neither he nor the Taxpayers have produced enough information to completely relieve Idaho income tax liability associated with the gain from the sale. There is enough information provided, however, to determine the Taxpayers’ basis in the [Redacted] property, thereby decreasing the amount of gain realized from the sale and correspondingly decreasing the associated amount of Idaho income tax due.

CONCLUSION

The information submitted by the Taxpayers in support of their protest has been reviewed. The Taxpayers have failed to present any legal or factual information to dispute the basis of the NODD, however, they have presented enough factual information to warrant an adjustment of the original NODD.

THEREFORE, the NODD dated January 26, 2010, is hereby MODIFIED, in accordance with the provisions of this decision and, AS SO MODIFIED, is APPROVED, AFFIRMED, and MADE FINAL.

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>
2005	\$1,944	\$486	\$660	\$3,090

Interest for the above deficiency is calculated through June 4, 2012.

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 _____ 2012.

IDAHO STATE TAX COMMISSION

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.
