

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 23561
)
)
Petitioners.) DECISION
)
_____)

HISTORY

On October 4, 2010, the Idaho State Tax Commission’s Income Tax Audit Bureau (Audit) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Taxpayers) for taxable year 2007 in the amount of \$18,844, being \$13,480 in income tax, a \$3,370 penalty, and \$1,994 in interest. This NODD was based on income indicated on [Redacted] received by the Idaho State Tax Commission (Commission) that stated the Taxpayers sold Idaho real property in 2007.

Audit sent a letter to the Taxpayers on August 12, 2010, informing them that they may have a filing requirement in Idaho, and asking that they either file an Idaho return or provide a written explanation why they do not need to. Audit sent a second letter on September 8, 2010, after receiving no reply to the first. After still receiving no reply, Audit issued the NODD.

On November 4, 2010, the Taxpayers memorialized a previous telephone conversation with Audit in an email that was considered by Audit to be a protest of the NODD. The email explained that the sale of the indicated property, located in [Redacted], Idaho, was due to the dissolution of [Redacted] (LLC), an LLC in which the Taxpayers were partners and had originally invested \$126,000 in order to buy the property. That email also explained that other partners in the LLC were responsible for tax filings and that the Taxpayers had been unable to procure the business’s tax returns from those partners. Attached to the email were copies of the

partnership agreement, EIN number, the original check for the \$126,000 investment, and the sales documents for the Taxpayers' 55 percent share of the property, which show a \$205,000 sale price. Also attached were documents for a like-kind exchange pursuant to Internal Revenue Code (IRC) § 1031, with the Idaho property listed as relinquished therein; however, the identification of replacement property was left blank.

After review of the provided information, Audit modified the NODD, resulting in the Taxpayers' burden being reduced to \$5,113; being \$3,652 in tax, a \$913 penalty, and \$548 in interest. On November 22, 2010, Audit sent the modified NODD and a letter to the Taxpayers explaining the modification and requesting that the Taxpayers either sign the enclosed protest withdrawal form or identify the basis for their continued protest.

After receiving no reply from the Taxpayers, Audit forwarded their file to the Commission's Legal and Tax Policy Division (Legal). On March 25, 2011, Legal sent a letter to the Taxpayers outlining their hearing rights and requesting they inform the Commission how they would like to proceed. Another letter was sent by Legal on November 22, 2011, referring to the March 25, 2011, letter, again requesting the Taxpayers inform the Commission on how they would like to proceed. The Commission has had no further communication with the Taxpayers and now moves forward with this decision.

DISCUSSION

The issues, in this case, are whether the Taxpayers must pay Idaho income tax on gain they realized on the sale of Idaho real property in the same year.

Idaho taxable income for a non-resident, such as the Taxpayers, 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; . . .

Idaho Code § 63-3011B defines taxable income as, “federal taxable income as determined under the Internal Revenue Code.” Idaho Code §63-3011C further states that, “The term ‘Idaho taxable income’ means taxable income as modified pursuant to the Idaho adjustments specifically provided in this chapter.” Therefore, the Taxpayers are responsible for gains realized on the sale of real property located in Idaho, subject to the pertinent adjustments to income found in Internal Revenue Code.

In this case, the Taxpayers have failed to provide any legal or factual information that would indicate further adjustment to their Idaho taxable income for taxable year 2007. The Taxpayers have alluded to the argument that they are not responsible for Idaho income tax on the sale of their Idaho property because it was part of a like-kind exchange pursuant to Internal Revenue Code § 1031. That code section governs exchanges of property held for productive use and investment and, in general, allows for non-recognition of gains or losses associated with exchanges of properties of like-kind. The Taxpayers provided the Commission with a copy of an agreement between the taxpayers and a title company to perform a like-kind exchange of the subject property, however, no property was listed as the replacement property and that section of the agreement is left blank and unsigned by either party. Therefore, the Taxpayers have introduced no evidence that a like-kind exchange took place.

The Taxpayers have also argued that they were not responsible for filing tax returns because the LLC had partners who performed that task. However, according to the sales documents, the Taxpayers sold their share of the property directly to the other partners in the LLC, realizing a substantial personal gain. The taxpayers confirmed these events when they explained that the LLC was dissolved and their share of the Idaho property was bought out by the other partners. This sale resulted in a \$79,000 gain realized by the Taxpayers, resulting in the tax liability on which this case is based.

CONCLUSION

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).

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 adjustment of the original NODD.

THEREFORE, the NODD dated October 4, 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> |
|-------------|------------|----------------|-----------------|--------------|
| 2007 | \$3,652 | \$913 | \$765 | \$5,330 |

Interest for the above deficiency is calculated through June 27, 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 _____ 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.