

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23792
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] protested the Notice of Deficiency Determination dated December 15, 2010, directed to [Redacted] (taxpayers) asserting income tax, penalty, and interest in the total amount of \$29,625 for taxable years 2005 and 2006. Mr. [Redacted] disagreed with the computation of the gain on the sales of Idaho property sold in 2005 and 2006, and the requirement to file Idaho income tax returns. 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 2005 and 2006. The Bureau researched the Tax Commission's records and found the taxpayers did not file Idaho individual income tax returns for those years. The Bureau sent the taxpayers letters asking them about the sales of the Idaho property and their requirement to file Idaho income tax returns. The taxpayers did not respond to the Bureau's letters, so the Bureau reviewed the information available, determined the taxpayers were required to file Idaho income tax returns, prepared returns for the taxpayers, and sent them a Notice of Deficiency Determination.

[Redacted] protested the Bureau's determination stating the properties in question were part of an Internal Revenue Code (IRC) section 1031 like-kind exchange. He stated he and [Redacted] (his ex-wife) filed and reported the gains on the sales on their federal and [Redacted]

income tax returns. [Redacted] stated no one informed him that income tax returns were required for Idaho. He stated that since he and his ex-wife filed joint returns, she should be required to pay half of any tax should the Tax Commission determine tax is owed. [Redacted] provided copies of documents identifying the properties in the 1031 exchange and documents from the intermediary used to accomplish the exchange.

The Bureau acknowledged [Redacted] protest and requested additional information to verify the 1031 exchange and the reporting of the replacement properties sold. [Redacted] did not respond to the Bureau's requests, so the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent [Redacted] a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. [Redacted] responded that he would not be able to attend a hearing and that a telephone hearing would not gain a lot since he had already provided everything he had to the Bureau. He stated again that he thought his accountant had filed all the necessary returns and reported all the capital gains they received. [Redacted] also asked that the Tax Commission pursue this liability with his ex-wife since the property was owned jointly and they filed joint federal income tax returns.

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. Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable years 2005 and 2006, the threshold amount for filing a nonresident return was \$2,500. Therefore, if the taxpayers realized income on the sales of the Idaho properties in

excess of \$2,500 in each of the taxable years 2005 and 2006, they were required to file a 2005 and a 2006 Idaho income tax return.

In 2005, the taxpayers sold two properties in Idaho. One had a sales price of \$225,000 and the other had a sales price of \$37,000. This information was provided via a 1099S informational return and in documents provided [Redacted]. The documentation for the larger sale substantiated that the sale of the property was a 1031 exchange for the lesser property sold and two other properties. Therefore, any gain realized on the sale of the relinquished property was deferred to the three replacement properties. [Redacted] stated they purchased the relinquished property as a possible place for retirement. However, they quickly decided it was not for them and put the property up for sale. The taxpayers, looking to defer any gain, sold the property through an intermediary and acquired three other Idaho properties in a 1031 like-kind exchange. The taxpayers subsequently sold the lesser of the three properties in 2005 at a gain of \$9,000. The taxpayers sold the remaining two replacement properties in 2006 for gains of \$22,500 and \$23,100.

In Idaho, a State 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 Bureau's determination of the taxpayers' income was based solely upon the sales prices of the properties sold. The Bureau did not account for any basis in the properties or any other income earned during the taxable years. The information/documentation [Redacted] provided showed the acquisition costs or the taxpayers' basis in the three replacement properties. However, no documentation was provided to show the selling costs incurred on the sales of the three replacement properties.

Deductions are a matter of legislative grace, and it is the taxpayer's responsibility to show his 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 information [Redacted] provided was sufficient to establish a basis in the properties sold. Therefore, the Tax Commission adjusted the Bureau's gain computations to include a basis amount as determined from the documentation provided.

As previously stated, the Bureau's determination included only income from the sales of the Idaho properties; it did not include any other income earned by the taxpayers. The Bureau also assumed the taxpayers were nonresidents of Idaho in 2005 and 2006. [Redacted] confirmed that fact. Therefore, the Bureau's computation of the taxpayers' Idaho taxable income should have included the taxpayers' income from other sources. Idaho Code section 63-3026A requires that a nonresident's personal exemptions and standard deduction be prorated in the ratio of Idaho source income to total income. The Bureau obtained information from the Internal Revenue Service regarding the taxpayers' federal adjusted gross income but did not use that information in its computation of the taxpayers' Idaho taxable income. Therefore, the Tax Commission also modified the Bureau's returns to incorporate the provisions of Idaho Code section 63-3026A.

The taxpayers' 2005 and 2006 federal income tax returns were filed as married filing joint. Idaho Code section 63-3031(c) states, if a married filing joint return is filed for federal income tax purposes, a married filing joint return must be filed with Idaho. Because the taxpayers were required to file a joint Idaho income tax return, any tax deficiency is due and collectible from both parties in part or in full, joint and several liability.

CONCLUSION

The taxpayers received income from an Idaho source; the sales of Idaho property. The taxpayers substantiated a 1031 exchange of one Idaho property for three other Idaho properties. The taxpayers established their basis in the three replacement properties thereby reducing the gain as determined by the Bureau. Therefore, Tax Commission finds it appropriate to modify the taxpayers' Idaho taxable income for the taxpayers' basis in the properties. And, since the taxpayers were nonresidents, the Tax Commission further modifies the taxpayers' Idaho taxable income to correspond with the provisions of Idaho Code section 63-3026A.

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 December 15, 2010, and directed to [Redacted] is MODIFIED in accordance with the provisions of this decision, and as so modified is AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$ 263	\$ 66	\$ 87	\$ 416
2006	1,770	443	481	<u>2,694</u>
			TOTAL DUE	<u>\$3,110</u>

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.

Receipt No. _____