BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 24114
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

[Redacted] (petitioner) protested the Notice of Deficiency Determination dated May 31, 2011, asserting income tax and interest for taxable year 2008 in the total amount of $788. Petitioner disagreed with the adjustment disallowing the Idaho capital gains deduction claimed on his 2008 Idaho individual income tax return. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner operated a sole-proprietorship [Redacted]. Petitioner leased a lot [Redacted] to operate his [Redacted] service. In 2008, petitioner decided he no longer desired to operate his [Redacted] business; however, petitioner's lease [Redacted] did not expire until August 31, 2008.

Apparently, petitioner was seeking someone to buy him out or take over the remaining term of his lease [Redacted]. On August 28, 2008, petitioner entered into an agreement with The [Redacted] wherein petitioner would be compensated for arranging a lease [Redacted]. The agreement consisted of a finder's fee of $16,500 and a non-compete agreement of $500 both contingent upon the execution and commencement of a valid and enforceable lease [Redacted] establishing [Redacted] leasehold rights to the property to commence no later than September 1, 2008. Petitioner apparently fulfilled his part of the agreement and received payment as agreed.

On petitioner's 2008 Idaho individual income tax return, petitioner claimed an Idaho capital gain deduction on the amount of the finder's fee. The Income Tax Audit Bureau (Bureau) reviewed petitioner's return, requested information from petitioner, reviewed the information petitioner provided, and determined there was no qualifying property sold. The Bureau adjusted petitioner's return and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau's determination stating that he had lease rights to the property. He stated the contract on the lease clearly shows his rights to the property. The Bureau reviewed the information and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent petitioner a letter discussing the options available for redetermining a protested Notice of Deficiency Determination. Petitioner failed to respond, so the Tax Commission sent a follow-up letter to petitioner. The Tax Commission never received a response from petitioner so the matter was decided on the information available.

LAW AND ANALYSIS

Idaho Code section 63-3022H states, in pertinent part:

> DEDUCTION OF CAPITAL GAINS. (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.
>
> . . .
>
> (3) Property held by an estate, trust, S corporation, partnership, limited liability company or an individual is "qualified property" under this section if the property had an Idaho situs at the time of sale and is:
> (a) Real property held at least twelve (12) months;
> (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;
> (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;

> (d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
> (e) Timber grown in Idaho and held at least twenty-four (24) months; . . .

Petitioner held a lease on property he operated a [Redacted] business. The lease on that property was due to expire or terminate on August 31, 2008. Petitioner wanted out of the [Redacted] business, and he apparently was looking to sell his business. It is unknown, but the presumption is petitioner had an option to renew his lease [Redacted] at the expiration of the lease term. If this is the case, petitioner had some rights to the leased property because of the option. However, since petitioner's lease term was about to expire, his rights to the property would only continue if he had the option to renew. Apparently, just prior to petitioner's lease expiring, petitioner found someone to lease the property [Redacted] and in consideration for bringing the two together, petitioner was paid a "Finder's Fee" from the new lessee.

The agreement between petitioner and [Redacted] clearly states the consideration given is for bringing [Redacted] together to acquire a lease on the property once held by petitioner. The agreement specifically states the finder's fee is for execution and commencement of a valid and enforceable lease [Redacted] to commence no later than September 1, 2008, after the expiration of petitioner's lease. Therefore, even if petitioner had a renewable option [Redacted] his leasehold interest ended when petitioner failed to exercise his option.

Idaho Code section 63-3022H states only certain capital assets qualify for the Idaho capital gains deduction. Petitioner stated his leasehold rights in the property qualified as real property sold. However, the agreement between petitioner and [Redacted] was for a finder's fee and a non-compete agreement, not the sale or sublease of petitioner's lease with [Redacted]. A finder's fee is not qualified property for the Idaho capital gains deduction.

CONCLUSION

Petitioner held a leasehold interest in Idaho property that was due to expire on August 31, 2008. Petitioner arranged a lease agreement between the owner of the property and a new lessee. Petitioner was compensated by the new lessee for arranging the lease with the lessor. The compensation petitioner received was not from the sale of qualified property for purposes of the Idaho capital gains deduction. Therefore, the Tax Commission upholds the Bureau's disallowance of the Idaho capital gains deduction claimed by petitioner.

The Bureau added interest to petitioner's tax liability. The Tax Commission reviewed the addition of interest and found it appropriate and in accordance with Idaho Code section 63-3045.

THEREFORE, the Notice of Deficiency Determination dated May 31, 2011, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED that petitioner pay the following tax and interest:

YEAR	TAX	INTEREST	TOTAL
2008	$710	$101	$811

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of petitioner'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.

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