

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[Redacted],) DOCKET NO. 24123
)
)
Petitioners.) DECISION
)
_____)

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated October 28, 2009, directed to [Redacted] asserting income tax, penalty, and interest in the total amount of \$13,113 for taxable year 2006. The taxpayer 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 Petitioners sold real property located in Idaho in 2006. The Bureau researched the Tax Commission’s records and found the Petitioners did not file an Idaho individual income tax return for that year. The Bureau sent the Petitioners letters asking about the sale of their Idaho property and their requirement to file an Idaho income tax return. The Petitioners did not respond to the Bureau’s letters, so the Bureau reviewed the information available, determined the Petitioners were required to file an Idaho income tax return, prepared a return for the Petitioners, and sent them a Notice of Deficiency Determination.

The taxpayer protested the Bureau’s determination and subsequently provided closing documents on the sold property. The Bureau reviewed the information and modified its audit determination. The taxpayer still did not agree with the Bureau’s determination of the gain on the sale, so the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer contacted the Tax Commission and provided additional information regarding the purchase and sale of the Idaho property. From the additional information the taxpayer provided, the Tax Commission was able to obtain information on the taxpayer's purchase of the property. The Tax Commission determined the Petitioners' basis in the property and hereby issues its decision on 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 2006, the Petitioners sold property in Idaho with a sales price of \$[Redacted]. This information was provided via a 1099S informational return and confirmed by the taxpayer.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2006, the threshold amount for filing a nonresident return was \$2,500. Therefore, if the Petitioners realized income on the sale of the Idaho property in excess of \$2,500, they were required to file an Idaho income tax return.

The Bureau's initial determination of the Petitioners' income was based solely upon the sales price of the property sold. Later, the Bureau included some selling costs but did not account for a basis in the property.

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 taxpayer did not have documentation to establish her basis in the property sold; therefore, the Bureau included the selling price of the property in the taxpayer's income. While it is not reasonable to assume the taxpayer had no basis in the property, it is likewise unreasonable for the Tax Commission to determine a basis without some sort of documentation. However, the taxpayer did provide the Tax Commission with information about the individuals from whom she purchased the property. The taxpayer stated it was a private party sale and they were making monthly payments to the sellers. The Tax Commission reviewed its records and found the installment sale reported by the sellers. Based upon the installment sale information, the Tax Commission was able to establish a basis for the taxpayer in the property sold. The Tax Commission also found that the taxpayer held the property long enough for it to qualify as qualifying property for the Idaho capital gains deduction.

CONCLUSION

The Petitioners received income from an Idaho source; the sale of Idaho property. The Petitioners received a gain on the sale as determined by the Tax Commission that exceeded the threshold for filing a nonresident Idaho income tax return. The Petitioners were required to file an Idaho income tax return. The return the Bureau prepared was based upon limited information. The taxpayer provided additional information which produced a more accurate computation of the gain realized on the sale of the property. Therefore, the Tax Commission modifies the Bureau's determination to include the Petitioners' basis and the Idaho capital gains deduction.

The Bureau added interest and penalty to the Petitioners' Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate as to the modified tax liability. *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 AS MODIFIED by this decision.

IT IS ORDERED that the [Redacted] pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$633	\$158	\$173	\$964
		LESS PAYMENT RECEIVED		(964)
			TOTAL DUE	0

An explanation of the Petitioners' 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.
