

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24179
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated May 3, 2011, asserting income tax, penalty, and interest in the total amount of \$8,454 for taxable year 2006. Petitioner disagreed with the computation of the gain on the sale of his Idaho property and how Idaho taxes nonresident individuals. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner was a nonresident of Idaho in 2006. The Income Tax Audit Bureau (Bureau) received information that showed Petitioner sold real property located in Idaho in 2006. The Bureau researched the Tax Commission's records and found Petitioner did not file an Idaho individual income tax return for that year. The Bureau sent Petitioner a letter asking about the sale of his Idaho property and his requirement to file an Idaho income tax return. Petitioner responded with a copy of his 2006 federal income tax return which, the Bureau reviewed and used to prepare an Idaho income tax return for Petitioner.

The Bureau sent Petitioner a copy of the Idaho return it prepared. Petitioner disagreed with the Bureau's return stating it only accounted for part of his capital gains and losses. Petitioner prepared his own 2006 Idaho income tax return and submitted it to the Bureau. The Bureau reviewed Petitioner's Idaho income tax return and found Petitioner reported his net capital gain from all activities rather than just his Idaho source capital gains. The Bureau explained that since

Petitioner was a nonresident of Idaho, only Idaho source income and losses are taxable by Idaho. The Bureau then prepared a Notice of Deficiency Determination and sent it to Petitioner.

Petitioner continued to disagree with the Bureau's determination and provided another copy of his Idaho income tax return along with his payment of the tax and interest owed on that return. The Bureau acknowledged Petitioner's protest and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing wherein the sale of the property was discussed along with Idaho's method of taxing nonresident individuals. Petitioner stated Idaho's computation of his taxable income did not accurately show his income for the year. He stated the capital gains deduction should not be limited because of non-Idaho capital losses. Petitioner argued his tax would be substantially less if he was an Idaho resident.

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 year 2006 the threshold amount for filing a nonresident return was \$2,500. Therefore, if Petitioner realized income on the sale of his Idaho property in excess of \$2,500, he was required to file an Idaho income tax return. In 2006, Petitioner and his father sold property in Idaho with Petitioner's share of the sale being \$205,498.

The Bureau's determination of Petitioner's Idaho taxable income was based upon the gain on the sale of the Idaho property Petitioner reported on his [Redacted] income tax return. The

Bureau allowed Petitioner the Idaho capital gains deduction but the deduction was limited as specified in Idaho Code section 63-3022H. Petitioner disagreed that the limitation should be applied and that as a nonresident he should not pay substantially more tax than a resident with the same type of income.

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

(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.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

Taxable income is defined in Idaho Code section 63-3011B as federal taxable income as determined in the Internal Revenue Code (IRC). IRC section 1222(9) defines capital gain net income as the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges. Therefore, because Petitioner's taxable income included capital gain net income, 60 percent of the capital gain from the sale of his Idaho property can be deducted in determining his Idaho taxable income.

However, Petitioner's capital gain net income, included in taxable income, was less than the total available capital gains deduction. Idaho Code section 63-3022H(2) limits the capital gain deduction to the capital gain net income included in taxable income. Therefore, Petitioner's capital gains deduction is limited to the capital gain net income included in taxable income or \$46,780.

Idaho's ability to tax nonresidents is derived from the income earned from sources located within the boundaries of the state. In Shaffer v. Carter, 252 U.S. 37, 52 (1920) the court stated,

"And we deem it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein;..."

Therefore, Petitioner's Idaho taxable income can only include income and losses from Idaho sources, and the income and losses occurring while a resident of Idaho.

CONCLUSION

Petitioner received income from an Idaho source; the sale of Idaho property. Petitioner's gain from the sale exceeded the threshold for filing a nonresident Idaho individual income tax return. Petitioner's Idaho taxable income can only include those items of Idaho source income or loss Petitioner had in 2006. Petitioner's Idaho capital gain qualified for the Idaho capital gains deduction; however, Petitioner did not have adequate capital gain net income included in his taxable income to get the full benefit of the capital gains deduction. *See* Idaho Code section 63-3022H(2). The return the Bureau prepared took all this into account; therefore, the Tax Commission upholds the Bureau's determination of Petitioner's 2006 Idaho taxable income.

The Bureau added interest and penalty to Petitioner's 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 May 3, 2011, and directed to [Redacted] is AFFIRMED.

IT IS ORDERED that Petitioner pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$5,669	\$1,417	\$1,704	\$8,790
			LESS REMITTANCE	<u>(402)</u>
			BALANCE DUE	<u>\$8,388</u>

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

An explanation of the 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.
