

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24209
Petitioners.)
DECISION
_____)

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated June 13, 2011, asserting income tax, penalty, and interest in the total amount of \$154,627 for taxable year 2006. Petitioners disagreed that they sold property in Idaho and failed to report the gain on the sale of that property. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners are residents of the state of [Redacted]. The Income Tax Audit Bureau (Bureau) received information that showed Petitioners sold real property located in Idaho in 2006 with a selling price of \$1,350,000. The Bureau searched the Tax Commission’s records and found Petitioners did not file an Idaho individual income tax return for that year. The Bureau sent Petitioners letters asking about the sale of their Idaho property and their requirement to file an Idaho income tax return. Petitioners stated [Redacted] allowed a friend to use him to get a construction loan and that individual has been fraudulently using [Redacted] name. Petitioners stated they had no involvement in the purchase or sale of the property. The Bureau asked for something to substantiate the Petitioners’ claim, but failed to receive anything from Petitioners. After several unanswered attempts to get something substantive from Petitioners, the Bureau reviewed the information available and determined Petitioners were required to file an Idaho income

tax return. The Bureau prepared a return for Petitioners and sent them a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination stating they had no involvement with the transaction and did not know what it was for. Petitioners stated if their name is on any of the paperwork, it was used fraudulently. The Bureau acknowledged Petitioners' protest and sent the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners stated again that they knew nothing about any property sold in Idaho. Petitioners stated they have never been to northern Idaho let alone owned property in Idaho. Petitioners stated they would send the Tax Commission a letter attesting to that fact. The Tax Commission received Petitioners' letter and decided to contact the title company involved with the sale to see if there was any information it could provide. The title company was able to provide copies of the warranty deed and the settlement statement. The Tax Commission reviewed those documents and found that the signature on the warranty deed looked to be that of [Redacted]. A further indication that the signature was [Redacted] was the attestation to the signature by a notary public from the same area [Redacted] where Petitioners lived. The Tax Commission provided this information to Petitioners, but they failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

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,

Petitioners were listed as the sellers of property located in northern Idaho. The sales price of the property was \$1,350,000 as evidenced by a form 1099S and confirmed by the settlement statement.

Petitioners argued that they had no knowledge of the sale. However, [Redacted] name appears on the settlement statement and warranty deed. [Redacted] signature also appears in two places on the warranty deed and was attested to by a [Redacted] notary public. The warranty deed is strong evidence Petitioners had knowledge of the property sale.

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 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 determination of Petitioner's Idaho taxable income was based solely upon the sales price of the property sold. The Bureau did not have the information provided by the title company. The settlement statement identified costs and loan payoffs that were credited to [Redacted]. Although mortgages do not substantiate basis in a property, they are a starting point when no other information is available.

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). Nevertheless, it is appropriate that the Tax Commission use whatever information that is available to determine a taxpayer's correct tax liability. The Tax Commission finds it plausible that Petitioners' basis in the property consisted of the first

mortgage payoff amount and the construction costs amount. Therefore, the Tax Commission adjusted the Bureau's gain computation to include these basis amounts.

Petitioners failed to provide anything to support their position that the sale of the property was a fraudulent use of [Redacted] name. 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). Petitioners did not meet their burden. However, as stated above, information is available to establish a basis for Petitioners in the property sold, and it is prudent that the Tax Commission use whatever information is available to determine the correct tax liability of Petitioners.

CONCLUSION

Absent substantiated evidence to the contrary, Petitioners sold Idaho property in 2006 thereby producing income from an Idaho source. Based upon the information available, Petitioners had a gain on the sale that exceeded the threshold for filing an Idaho income tax return for 2006; therefore, Petitioners were required to file a 2006 Idaho income tax return.

The Tax Commission modified the return prepared by the Bureau to include amounts determined to be Petitioners' basis in the property. The Bureau added interest and penalty to 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 June 13, 2011, and directed to [Redacted] is AFFIRMED AS MODIFIED.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$6,530	\$1,633	\$1,947	\$10,110

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

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.
