

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 24582
[Redacted],)
)
)
) Petitioners.) DECISION
)
_____)

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated August 4, 2011, asserting additional liabilities for Idaho income tax and interest in the total amount of \$4,403 for 2008.

The only issue in this docket is whether the petitioners, domiciliaries of Idaho, are subject to tax on income from the installment sale of real property. The property was located in another state, and the right to receive the installment payments was inherited from a decedent.

The income in question was reported by the petitioners for both federal purposes and for Idaho purposes. On their Idaho return, the petitioners claimed the Idaho capital gains deduction. The auditor disallowed the Idaho capital gains deduction since the property in question was not located in Idaho. The petitioners appear to have conceded that the Idaho capital gains deduction is not allowable and, instead, have raised other issues which they contend precludes the state of Idaho from taxing the gain here in question.

The petitioners contend, we presume correctly, that the income in question is “income in respect of a decedent.” The taxation of this income is governed by Internal Revenue Code § 691. Treasury Regulation 1.691(a)-5 addresses an inherited installment obligation, in part, as follows:

The decedent’s estate (or the person entitled to receive such income by bequest or inheritance from the decedent or by reason of the decedent’s death) shall include in its gross income when received the same proportion of any payment in satisfaction of such obligations as would be returnable as income by the decedent if he had lived and received such payment.

It further appears that the petitioners agree that the income in question should be reportable to the Internal Revenue Service. However, they contend that the income should not be reportable to Idaho since the decedent would not have been required to report the income to Idaho had they survived to have received it.

Idaho Code § 63-3002 sets forth the intent of the legislature regarding the Idaho income tax. It stated:

Declaration of intent. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States. (Underlining added.)

The petitioners have cited no Idaho statute creating an exemption for the income here in question. Exemptions from income must be clearly stated in the law, as opposed to being inferred or implied. The Idaho Supreme Court stated:

The Stang's admit that no provision of the Idaho Income Tax Code specifically provides that the \$8,000 can be deducted or exempted from Idaho taxable income. Therefore, the \$8,000 distribution is "Idaho taxable income" under the Idaho Income Tax Code.

The Stangs urge this Court to "construe" the Idaho Income Tax Code in a manner that would permit the Stangs to avoid paying Idaho income tax on the \$8,000 distribution. They argue that because the Idaho Income Tax Code does not

expressly address this situation, this Court should be free to construe the tax code in a manner that would prevent the Stangs from having to pay taxes to both California and Idaho on the same monies. When construing the provisions of the Idaho Income Tax Code, however, we must enforce the law as written. Potlatch Corp. v. Idaho State Tax Comm'n, 128 Idaho 387, 913 P.2d 1157 (1996). If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. *Id.* This Court has no **116 *803 authority to rewrite the tax code. Bogner v. State Dep't of Revenue and Taxation, 107 Idaho 854, 693 P.2d 1056 (1984). Any exemption from taxation must be created or conferred in clear and plain language and cannot be made out by inference or implication. Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964). This Court does not have the authority to create deductions, exemptions, or tax credits. If the provisions of the tax code are socially or economically unsound, the power to correct it is legislative, not judicial. *Id.*

Idaho State Tax Commission v. Stang, 135 Idaho 800, 802-803 (2001).

The Commission finds that the income here in question is clearly includable in the computation of Idaho taxable income.

The petitioners were advised that they may be entitled to a credit for taxes paid another state if they could demonstrate that they had paid the tax to another state. However, no such proof has been presented.

THEREFORE, the Notice of Deficiency Determination dated August 4, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The petitioners have paid the amount asserted, therefore, no further demand for payment is made.

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.
