



represented gain on the options. The Petitioners then filed their Individual Income Tax return claiming the Idaho Capital Gain Deduction on the gain from the options.

## LAW AND ANALYSIS

The statute that governs in this situation in pertinent part says:

Idaho Code section 63-3022H 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.

(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.

(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;

... Underline added.

The Income Tax Administrative Rules further define assets that are eligible.

Idaho Income Tax Administrative Rule 171.02 gives examples of intangible assets that do not qualify for the Idaho Capital Gains deduction include:

...

d. options.

Underline added.

The Petitioners' position is that Idaho Code section 55-101 which defines real property includes "possessory rights" and that should make the options to purchase real estate, an asset that qualifies for the Idaho Capital Gains Deduction. An option is not a possessory right. In addition, Rule 171.02.d specifically excludes options from the deduction.

CONCLUSION

The gain the Petitioner A realized on the exchange of real estate options and passed through his S-Corporation is not “qualified property” for the Idaho Capital Gain Deduction under Idaho Code section 63-3022H or Income Tax Administrative Rule 171.02.d.

THEREFORE, the Notice of Deficiency Determination dated September 29, 2010, and directed to the Petitioners is hereby AFFIRMED by this decision.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/08	3,229	0	559	<u>3,788</u>
		TOTAL DUE		<u>\$ 3,788</u>

Interest is calculated through March 31, 2013, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given. As set forth in the enclosed explanation, you must deposit with the Tax Commission 20 percent of the total amount due in order to appeal this decision.

An explanation of the Petitioners’ right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2013, 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.

[Redacted]

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