

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 23878
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	
_____	)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated January 19, 2011, asserting income tax, penalty, and interest in the total amount of \$26,819 for taxable year 2007. Petitioners disagreed with the gain determined on the sale of Idaho 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 2007 with a selling price of \$276,200. 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 the Idaho property and their requirement to file an Idaho income tax return. Petitioners did not respond, so the Bureau obtained additional information from the Internal Revenue Service and prepared an Idaho individual income tax return for Petitioners. The Bureau sent Petitioners a Notice of Deficiency Determination which Petitioners protested.

Petitioners stated the Bureau’s determination reflected the sale of the spec home but does not reflect the building loan, closing costs, and the overhead they incurred as the builder. Petitioners subsequently provided additional documentation which the Bureau reviewed and modified its original audit report. The Bureau sent Petitioners the modified report and asked

them to withdraw their appeal if they agreed with the results of the modified audit report. Petitioners did not agree with the Bureau's modified report asserting that they believed the sale of the property resulted in a loss. Petitioners stated they would provide additional documentation showing the sale was a loss. The Bureau waited for the additional documentation and even contacted Petitioners a couple of times regarding the documentation, but nothing was ever provided. Therefore, the Bureau referred 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. The Tax Commission's letter was returned as being unable to forward. The address the Tax Commission used was the same address used throughout the audit process. Since Petitioners failed to maintain contact with the Tax Commission, 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 2007, Petitioners constructed and sold a house in Idaho. The sales price of the property was \$276,200 as evidenced by a form 1099S and confirmed by the settlement statement Petitioners provided.

Petitioners stated the property sold at a loss and provided documents in support of their position. The Bureau reviewed the information provided and modified its original findings, but the result was still a gain. Petitioners continued to disagree with the Bureau's findings but did not provide anything further to support their position.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2007 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 original determination of Petitioners' Idaho taxable income was based solely upon the sales price of the property sold. At that time Petitioners chose not to respond to the Bureau's inquiries. However, after getting Petitioners' attention, the Bureau reviewed the information Petitioners subsequently provided and modified its determination to allow for basis and closing costs. Petitioners continued to argue not all costs associated with the property were considered in the Bureau's determination; yet Petitioners provided no additional documentation.

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). Petitioners have not proved other costs attributable to the construction and sale of the Idaho property. If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S. Ct. 413 (1931).

#### CONCLUSION

Petitioners sold Idaho property in 2007, 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 2007; therefore, Petitioners were required to file a 2007 Idaho income tax return.

The Tax Commission reviewed the modified return prepared by the Bureau and found it to be an accurate representation of Petitioners' Idaho taxable income based upon the information presented. Therefore, the Tax Commission upholds the Bureau's modified determination.

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 January 19, 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>
2007	\$2,578	\$645	\$516	\$3,739

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 \_\_\_\_\_ 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.  
  
\_\_\_\_\_