

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24525
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated October 6, 2011. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax and interest in the total amount of \$4,847 for 2008.

The petitioners were at all times relevant to this docket nonresidents of Idaho. They filed their 2008 Idaho income tax return reflecting their proportionate share of income from two limited partnerships which were transacting business in the state of Idaho. Much of the income reported was from long term capital gains. The petitioners claimed the Idaho capital gains deduction with regard to all of the reported capital gain.

The auditor disallowed all of the Idaho capital gains deduction stating that the petitioners had not demonstrated that any of the income was gain qualifying for this deduction. The petitioners contend that the state of Idaho should pursue the limited partnerships to acquire the necessary information to establish whether any of the gain qualified for this deduction.

The petitioners did supply the Commission with copies of the relevant Schedules K-1 from the limited partnerships. Both such schedules had the same statement on it relating to the reported capital gains:

The reported capital gain relates to prior year losses. Please consult with your tax advisor to determine the status of any passive loss or at-risk basis carryovers to ensure proper treatment of the amounts reported.

Taxpayers have the burden of demonstrating that they are entitled to deductions. The United States Supreme Court stated:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

* * *

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Company, Inc. v. Helvering, 292 U.S. 435, 440 (1934).

The petitioners contend that the limited partnerships dealt in real estate and both had an Idaho apportionment factor. Accordingly, they contend that they should be allowed the deduction sought. Idaho Code section 63-3022H sets forth the authority for the deduction. It stated, in part:

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;

The petitioners contend that the gains should be considered to have been from the sale of qualifying Idaho realty. To be entitled to the deduction, the petitioners need to establish:

1. that the gain was from a sale,
2. that such sale was a sale of real property,
3. that the real property was located in Idaho, and
4. that such property was held for at least twelve (12) months.

None of the above criteria has been met. The Commission finds that the petitioners have failed to meet their burden of proof in this matter. Accordingly, they are not entitled to the deduction sought.

THEREFORE, the Notice of Deficiency Determination dated October 6, 2011, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, and interest (computed to April 30, 2013):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$4,318	\$758	\$5,076

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.
