

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24580
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated September 20, 2011, asserting income tax, penalty, and interest in the total amount of \$19,762 for taxable year 2007. Petitioner disagreed with the gain determined on the sale of his Idaho property. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner is a non-resident of Idaho. The Income Tax Audit Bureau (Bureau) received information that showed Petitioner sold real property located in Idaho in 2007 with a selling price of \$189,000. The Bureau searched the Tax Commission’s records and found Petitioner did not file an Idaho individual income tax return for that year. The Bureau sent Petitioner a letter asking about the sale of the Idaho property and his requirement to file an Idaho income tax return. Petitioner did not respond so the Bureau sent Petitioner a follow-up letter. Still Petitioner failed to respond. The Bureau obtained additional information from the [Redacted], determined Petitioner was required to file an Idaho income tax return, prepared an Idaho income tax return for Petitioner, and sent him a Notice of Deficiency Determination.

Petitioner protested the Notice of Deficiency Determination. Petitioner stated he did not believe he needed to file an Idaho income tax return because he was active duty military and a resident of [Redacted] when the property was sold. Petitioner believed his active duty status and home state made him exempt.

The Bureau acknowledged Petitioner's protest and sent him a letter explaining his tax situation with Idaho. The Bureau asked Petitioner to provide additional information, but Petitioner did not respond. Therefore, the Bureau referred the matter for administrative review.

The Tax Commission sent Petitioner a letter asking for some specific information regarding the property, and discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond, so the Tax Commission sent a follow-up letter to Petitioner. Petitioner contacted the Tax Commission and stated he would provide closing statements and a copy of his 2007 [Redacted] income tax return. After further contact with Petitioner, the Tax Commission received the information from Petitioner and then decided the matter based upon the information provided.

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, Petitioner sold bare land located in Idaho. The sales price of the land was \$189,000 as evidenced by a form 1099S and confirmed by Petitioner.

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 Petitioner realized income on the sale of the Idaho property in excess of \$2,500, he was 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 Idaho property. The Bureau did not allow for basis or any costs associated with the sale. Subsequently, Petitioner provided information and documentation that established

his basis in the property, and documented the closing costs incurred on the sale of the property. Petitioner also established his holding period of the property of fifteen months, which qualified the property for the Idaho capital gains deduction. *See* Idaho Code section 63-3022H.

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). Petitioner's subsequent submission of his basis information and closing costs was sufficient to show the Bureau's determination was incomplete. Petitioner met his burden. Therefore, the Tax Commission re-computed Petitioner's gain on the sale taking into account Petitioner's basis, closing costs, and allowing for the Idaho capital gains deduction.

CONCLUSION

Petitioner sold Idaho property in 2007, thereby producing income from an Idaho source. Petitioner's gain on the sale exceeded the threshold for filing an Idaho income tax return for 2007; therefore, Petitioner was required to file a 2007 Idaho income tax return. Petitioner provided information that established his basis in the property and the closing costs incurred. Petitioner also established he held the property long enough for the property to qualify for the Idaho capital gains deduction. Therefore, the Tax Commission upholds the Bureau's determination that Petitioner was required to file a 2007 Idaho individual income tax return, but modifies Petitioner's Idaho taxable income accounting for Petitioner's basis, closing costs, and the Idaho capital gains deduction.

The Bureau added interest and penalty to Petitioner's 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 September 20, 2011, and directed to [Redacted] is AFFIRMED AS MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$299	\$75	\$75	\$449

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

An explanation of the Petitioner's 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.
