

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24861
Petitioner.)
DECISION
_____)

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated January 10, 2012. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax, penalty, and interest in the total amount of \$16,946 for 2006.

From the record before the Commission, it appears that the petitioner was domiciled in the state of California during 2006. The petitioner sold Idaho real property during 2006 for \$168,200. The Tax Commission staff wrote to the petitioner requesting additional information, but received no response. Accordingly, the staff issued the Notice of Deficiency Determination referred to above deeming the entire sales price to be gain from the sale of the property. The petitioner filed a protest to the Notice of Deficiency Determination, and submitted a copy of the closing statement for the sale of the property. The closing statement confirms the sales price of the property. The petitioner was asked to provide documentation of her basis in the property. She furnished nothing to establish her basis.

There are two questions to be resolved in the determination of the petitioner's liability in this matter. The first is the amount of her gain. The second is whether the Idaho capital gains deduction should apply to reduce the proportion of the gain which should be subject to the Idaho income tax.

For the first question, we have the sales price established and some of the expenses of sale. However, even though the petitioner was asked to produce evidence of her basis, she failed to do so. The Commission may estimate the amount of her basis, but may bear heavily upon the petitioner since the shortage of documentation was due to the petitioner's failure to provide such. The information in the file indicates that the petitioner purchased the property here in question on June 24, 2005. The assessed value of the property at January 1, 2005, was \$124,414. The assessed value of the property at January 1, 2006, was \$149,701. It is not clear from the record whether improvements were made to the property during 2005. The auditor determined the gain to be the amount of the sales price (\$168,200).

In discussing a case in which the court did not have all of the facts, the U.S. Tax Court stated, in part:

The Code and the regulations do not expressly say what the remedy is if the taxpayer has no records proving the exact amount of an expense. The caselaw provides guidance. If a taxpayer establishes that he or she paid or incurred a deductible expense but does not establish the amount of the expense, under Cohan v. Commissioner, 39 F.2d 540, 543-544 (2d Cir.1930), a court may approximate the amount of the allowable deduction, "bearing heavily if * * * [the court] chooses against the taxpayer whose inexactitude is of his [or her] own making." For the rule in Cohan to apply, there must be sufficient evidence in the trial record to provide a rational basis for the estimate; otherwise, the claimed deduction must be disallowed. Polyak v. Commissioner, 94 T.C. 337, 345, 1990 WL 25009 (1990); Vanicek v. Commissioner, 85 T.C. 731, 743, 1985 WL 15409 (1985); Profl. Servs. v. Commissioner, 79 T.C. 888, 919-920, 1982 WL 11195 (1982); Luman v. Commissioner, 79 T.C. 846, 859, 1982 WL 11185 (1982); Epp v. Commissioner, 78 T.C. 801, 807, 1982 WL 11092 (1982).

Wolfgram v. Commissioner, T.C. Memo 2010-69.

After reviewing the information in the file, the Commission finds that there is sufficient basis in the file to reduce the reportable gain from \$168,200 to \$68,200 and further finds that this is appropriate for this decision.

The other question to be resolved is whether the taxable gain should be reduced by the Idaho capital gains deduction. The authority for this deduction is set forth in Idaho Code § 63-3022H which 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. (Underlining added.)

“Taxable income” was defined in Idaho Code § 63-3011B:

Taxable income. The term “taxable income” means federal taxable income as determined under the Internal Revenue Code.

Accordingly, it must be determined how much capital gain was included in the computation of the petitioner’s [Redacted] taxable income to be able to determine the amount, if any, of allowable amount of the Idaho capital gains deduction. The petitioner was asked to provide a copy of her 2006 [Redacted] income tax return, but failed to provide it. Accordingly, the Commission is not able to determine the amount, if any, of the allowable Idaho capital gains deduction.

The taxpayers have the burden of proof that they are entitled to any particular deduction.

The U. S. Supreme Court stated it as follows:

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 Co., Inc. v. Helvering, 292 U.S. 435, 440; 54 S.Ct. 788, 790 (1934).

The petitioner has not established the amount, if any, of capital gain that was included in her [Redacted] taxable income. Accordingly, she has failed to carry her burden that she is entitled to this deduction. Accordingly, the Idaho capital gains deduction is not allowed.

THEREFORE, the NODD dated January 10, 2012, is hereby MODIFIED, and as so MODIFIED is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (computed to March 31, 2013):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$3,363	\$841	\$1,023	\$5,227

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

An explanation of the taxpayer's 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.
