

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 24948
[Redacted],)
)
)
) Petitioners.) DECISION
)
_____)

BACKGROUND

On March 8, 2012, the Audit Bureau (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted], (Petitioners) proposing income tax, penalty, and interest for taxable year 2008 in the total amount of \$54,387. On May 12, 2012, the Petitioner filed a timely protest. In the protest letter, the Petitioner made an argument that he had no taxable gain. However, he did not provide support for the expenses claimed. A letter was sent on July 25, 2012, to modify the NODD, allowing his basis calculation. The balance due remaining for income tax, penalty, and interest was \$47,823.

ISSUES

1. Whether the Modified NODD, dated July 25, 2012, correctly calculates Idaho taxable income arising from a capital gain on the sale of real property in Idaho.
2. Whether the Petitioners are entitled to offset the gain with unsubstantiated expenses related to the property.
3. Whether the Petitioners are entitled to the Idaho Capital Gain deduction.

DISCUSSION

This is a non-filer case. The Petitioners did not submit Idaho individual income tax returns for taxable year 2008. Audit obtained information from the [Redacted] reporting the gross

receipts from the sale of real property in Idaho during 2008. The Petitioners had not filed an Idaho income tax return reporting the sale. Audit requested and received a transcript of the Petitioners' [Redacted] income records from [Redacted] [Redacted]. The Petitioners did not file a 2008 federal return either.

On February 13, 2013, the Commission sent the Petitioners a letter that explained the methods available for redetermining an NODD. The Petitioners did not respond.

CONCLUSION

The Commission makes this decision based on the information available. A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). The burden is on the taxpayer to show the deficiency is erroneous. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Petitioners failed to file their 2008 Idaho individual income tax return. Having presented no evidence in support of their position, the Petitioners have failed to meet their burden of proving error on the part of the deficiency determination.

On the first issue, absent substantiated information to the contrary, the Commission accepts the Bureau's calculation of the capital gain from the sale of real property in Idaho.

Second, the Petitioners are not entitled to offset the capital gain with expenses that are not substantiated.

Third, while the Petitioners did not file their federal tax return, we have calculated a capital gain from the sale of his property. The few documents provided, clearly show that the 12 month holding period is satisfied. The property sold is bare ground, removing the likelihood that this would be ordinary income on the [Redacted] return. The Commission does accept that the

Petitioners are entitled to the Idaho Capital Gain deduction.

[Redacted] told the auditor in correspondence, that the property was his sole and separate property, and that he intended to file as married filing separately. The tax liability has been calculated accordingly.

THEREFORE, the Notice of Deficiency Determination dated March 8, 2012, corrected on July 25, 2012, and directed to [Redacted] is hereby Affirmed, with the Modification allowing the Idaho Capital Gain deduction.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/08	13,042	3,261	2,323	<u>18,626</u>
			TOTAL DUE	<u>\$18,626</u>

Interest is calculated through May 30, 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.

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.
