

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25038
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated May 3, 2012. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax, penalty, and interest in the total amounts of \$271 and \$600 for 2009 and 2010, respectively.

The auditor made one adjustment in each year. For 2009, the auditor disallowed the claimed Idaho capital gains deduction in the amount of \$4,100. For 2010, the auditor adjusted the amount of capital gain included in the computation of Idaho taxable income to include only the gains from the sales of Idaho property while the petitioners had claimed a net capital loss including gains and losses from all property regardless of location.

The authority for the Idaho capital gains deduction is set forth in Idaho Code § 63-3022H which stated, in pertinent 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;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;

In the 2009 return, the petitioners reported net capital gains on their [Redacted] income tax return in the amount of \$32,313. On the petitioners' 2009 Idaho income tax return, they claimed an Idaho capital gains deduction in the amount of \$36,412. The auditor reduced the Idaho capital gains deduction claimed by the petitioners to \$32,312. The Commission finds that the petitioner should have been allowed an Idaho capital gains deduction in the amount of \$32,313, the amount of net capital gains reported on [Redacted] income tax return. For 2010, the petitioners reported a net capital loss on their Idaho income tax return in the amount of \$1,159 which is the same as the net capital loss reported on their 2010 [Redacted] income tax return. The petitioners' net capital gain from the dispositions of Idaho property during 2010 was \$7,382. The auditor raised the amount from Idaho capital gains and losses by the amount of \$8,541 (\$7,382 + \$1,159). The petitioners contend that the adjustment to the amount of capital gains and losses should not be more than the amount of gain that they realized from the dispositions of Idaho property. The Commission finds that the amount that must be added to the amount reported by the petitioners to arrive at the correct amount is \$8,541, the amount of the adjustment made by the auditor.

The petitioners also object to the assertion of the negligence penalty. They contend that they were not sufficiently informed by the Tax Commission staff to allow them to file their income tax returns correctly. Therefore, they contend that the negligence penalty should not be asserted.

The instructions for the Idaho Form CG stated, in part, “[t]he Idaho capital gains deduction cannot exceed the capital gain net income reported on the federal return.” The deduction claimed by the petitioners for both years clearly exceeded the capital gain net income reported on their federal income tax return. Accordingly, the Commission finds that the negligence penalty is appropriate.

THEREFORE, the Notice of Deficiency Determination dated July 26, 2011 is hereby APPROVED, AFFIRMED, AND MADE FINAL.

The total amount has been paid in full therefore, no demand for payment is made.

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.
