BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 25082
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated April 20, 2012. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax, penalty, and interest in the total amounts of $22,326 and $10,997 for 2005 and 2006, respectively.

The petitioners did not file Idaho income tax returns for the years in question. From the record before the Commission, it appears that the petitioners were nonresidents of Idaho during those years. The petitioner sold Idaho real property during both 2005 and 2006. The property sold in 2005 was sold for $244,500. The property sold in 2006 was sold for $155,000. The Tax Commission staff wrote to the petitioners requesting additional information, but initially 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 petitioners filed a protest to the Notice of Deficiency Determination, and submitted some additional information, some of which were only estimates of the costs to be included in the computation of the basis for the properties. The petitioner was asked to provide additional documentation of the basis in the properties. Some was furnished; other expenses were not documented.

There are two questions to be resolved in the determination of the petitioners' liability in this matter. The first is the amount (if any) of the gains. 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 prices established and some of the expenses of sale. However, even though the petitioners were asked to produce evidence of the costs to be included in the computation of the basis for the properties, they failed to do so for many of the costs. The Commission may estimate the amount of their basis, but may bear heavily upon the petitioners since the shortage of documentation was due to the petitioners' failure to provide such.

For the property sold in 2005, the petitioners were able to establish the price for which they purchased the property. They were also able to establish some or all of the costs of sale, which the auditor included in recomputing their gain from the disposition of this property. The result of the auditor's recomputation reduced the amount which he deemed to be gain from the disposition from $244,500 to $41,890.

For the property sold in 2006, the information in the file indicates that the petitioners purchased the property here in question at some time prior to 1984. The petitioners did not submit documentation to establish the amount which they paid for the property. The petitioners constructed a house on the property in 1984, apparently doing much of the work themselves. Accordingly, the value of their labor would not be includable in the computation of their basis in the properties.

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 the disposition of the property in 2006 from $143,606 to $84,542 and further finds that this is appropriate for this decision. The Commission further finds that the gain qualifies for the Idaho capital gains deduction.

THEREFORE, the Notice of Deficiency Determination dated April 20, 2012, is hereby MODIFIED, and as so MODIFIED is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to May 15, 2013):

YEAR	TAX	PENALTY	INTEREST	TOTAL
2005	$ 450	$113	$168	$ 731
2006	1,363	341	421	2,125
				$2,856

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.

_____