

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25240
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated August 2, 2012, asserting income tax, penalty, and interest in the total amount of \$5,268 for taxable year 2006. Petitioner disagreed with the gain determined on the sale of Idaho property. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner is a resident of the state of [Redacted]. The Income Tax Audit Bureau (Bureau) received information that showed Petitioner sold real property located in Idaho in 2006, with a selling price of \$110,000. 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 her requirement to file an Idaho income tax return. Petitioner responded with a copy of her [Redacted] income tax return for 2006 that reported the sale of the property. The Bureau prepared an Idaho income tax return for Petitioner based upon her [Redacted] income tax return and sent her a Notice of Deficiency Determination.

Petitioner, through her representative, protested the Notice of Deficiency Determination stating that the [Redacted] return submitted did not accurately reflect Petitioner’s basis in the property sold. Petitioner stated the property was inherited from her husband in 2004. Petitioner stated the basis reported on her [Redacted] income tax return was not a stepped-up basis as

provided for in the Internal Revenue Code. The Bureau asked if an amended [Redacted] income tax return was going to be filed. Petitioner stated there was no need to file an [Redacted] return since it was past the statute of limitations for claiming a refund. The Bureau asked for documentation to support a stepped-up basis. Petitioner provided information concerning real estate market trends and a statement regarding a discussion her representative had with realtors from the area where the property was located.

The Bureau reviewed the information provided, acknowledged Petitioner's protest, and 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 responded with the specific information requested and that she did not want a hearing, but would rely on the information provided. Therefore, the Tax Commission decided the matter based upon the information provided and available.

#### 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 2006, Petitioner sold bare land located in Idaho. The sales price of the land was \$110,000 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 2006, 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, she was required to file an Idaho income tax return.

The Bureau's determination of Petitioner's Idaho taxable income was based upon the sale reported on her [Redacted] income tax return. Petitioner stated the gain reported on her [Redacted] income tax return was incorrect. Petitioner stated the property was property her husband owned prior to their marriage that she inherited when he died in 2004. Petitioner argued she should get a stepped-up basis in the property since the property was her husband's separate property. Petitioner had no documentation establishing fair market value when she received the property, but she did provide other information in an effort to establish fair market value at the time of her husband's death.

Deductions are a matter of legislative grace, and it is the taxpayer's responsibility to show his entitlement to a deduction. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S. Ct. 788, 78 L. Ed. 1348 (1934). Basis or stepped-up basis in the determination of the gain on the sale of property is a deduction taxpayers need to establish by way of documentation. Petitioner did not have contemporaneous documentation, but she did provide real estate market trend information and information from experts that provided a range of market values for the property as it might have been in 2004. The Tax Commission reviewed that information and determined the low end of the market values range was reasonable, considering what market values for property in that area were doing in 2004 through 2006. Therefore, the Tax Commission re-computed Petitioner's gain on the sale based on a stepped-up basis of \$80,000.

#### CONCLUSION

Petitioner sold Idaho property in 2006 thereby producing income from an Idaho source. Based upon the information available, Petitioner had a gain on the sale that exceeded the

threshold for filing an Idaho income tax return for 2006; therefore, Petitioner was required to file a 2006 Idaho income tax return.

The information Petitioner provided to establish a stepped-up basis in the property sold provided a reasonable means of determining Petitioner's basis in the property. Therefore, Petitioner's gain on the sale is hereby reduced in accordance with the computation of the gain using a stepped-up basis.

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 August 2, 2012, 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>
2006	\$1,187	\$297	\$374	\$1,858

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

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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.

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