

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25480
Petitioner.)
DECISION
_____)

BACKGROUND

On December 7, 2012, the Audit Bureau (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted](Petitioner) denying a refund request and proposing income tax, penalty, and interest for taxable year 2010 in the total amount of \$21,300. On January 8, 2013, the taxpayer filed a timely protest. On February 6, 2013, the Commission sent the Petitioner and her representative a letter that explained the methods available for redetermining an NODD. The Petitioner’s representative responded, and sent a copy of a final signed audit report from the [Redacted] accepting the Petitioner’s position that the transfer was incident to the divorce.

ISSUES

Whether the payment received by the Petitioner from her former spouse qualified to be treated as separation of marital assets, and therefore a tax deferred transaction under IRC section 1041 and Treasury Regulation 1.1041-1T(b).

DISCUSSION

The Petitioner was divorced in 1999. The Petitioner received a check in the amount of \$231,499.67 from her ex-husband, during 2010, in settlement of their divorce agreement. When the Petitioner had her 2010 income tax returns prepared, the original preparer reported the entire amount as a capital gain. In July 2012, the Petitioner had another preparer file an amended

return, re-characterizing the amount received as a non-taxable payment instead of capital gain. Audit disallowed the refund because of the time lapse between the divorce and the payment. Audit found that the transfer did not meet the standards of Treasury Regulation 1.1041-T(b).

LAW AND ANALYSIS

Idaho Code section 63-3002 Declaration of intent.
Says in part;

“...to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law...”

Idaho law is silent on the transfer of property between spouses; therefore we follow the federal treatment.

Internal Revenue Code Section 1041 Says in part;

(a) “General rule

No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of) -

- (1) a spouse, or
- (2) a former spouse, but only if the transfer is incident to the divorce.”

The statute is broadly written. The regulations provide more specific guidance on this issue.

Treasury Regulation 1.1041-1T(b) Transfer incident to a divorce.

If the transfer happens within one year of the cessation of the marriage, the transfer is considered “incident to the divorce” even if the property is not part of the divorce settlement.

If the property is being transferred pursuant to a divorce or separation instrument and the transfer happens within six years of a divorce, there is a presumption that it is related to the cessation of a marriage.

If the transfer happens beyond that six year period, the presumption that it is not related can be overcome by showing there were legal or business impediments to the transfer, and that

the transfer took place promptly after the impediment was removed or there was a dispute over the value of the property.

The Petitioner's position is that there was a dispute to the value of the property, and there was difficulty in obtaining the financing necessary for the ex-husband to pay the Petitioner. The Petitioner's ex-husband refinanced the property and paid the Petitioner from those funds. An appraisal done on such a large and unique property is expensive. The appraisal was required by the bank before any loans would have been granted. After the appraisal was completed, the bank declined to refinance the property, requiring the Petitioner's ex-husband to find another bank. The Petitioner claims that there was no agreement to the value of the property, and that delayed the settlement of the property.

Audit cites [Redacted] Letter Ruling 9306015, where a transfer of the husband's interest in the marital home to his former wife took place more than eight years after the divorce became final as found to not be related to the divorce. There are a couple of significant differences in the present case that distinguish it from the facts of that ruling. First, in the case at hand, the property was listed in the divorce instrument. Second, the subject property is a unique resort property rather than a single family home. It is much more difficult to value a one of a kind property. Being listed in the divorce agreement, and having a dispute as to the value, can meet one of the standards to rebut the presumption that taking place more than six years after the cessation of the marriage means it is not "incident to the divorce."

The Petitioner provided a copy of the divorce agreement as part of the audit. The property that was the purpose of the payment was named in the divorce agreement, and the Petitioner has asserted that there was a disagreement on the value. Therefore, it does overcome the presumption that it is not "incident to the divorce."

The Commission was provided with a copy of the [Redacted] audit after the completion of the audit by Idaho. The [Redacted] auditor accepted the Petitioners position. The Commission does not have conclusive information that would lead it to a different conclusion.

CONCLUSION

Therefore, the Commission accepts the [Redacted] determination of the issue and grants the refund request.

THEREFORE, the NODD dated December 7, 2012, and directed to [Redacted], is hereby CANCELLED.

An explanation of the taxpayer's 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.
