

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25495
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On January 9, 2013, the staff of the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable year 2008 in the total amount of \$31,681.

On January 17, 2013, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers stated in their protest that the figures used in the NODD to calculate the amount of tax due were incorrect. The taxpayers subsequently provided copies of their 2008 [Redacted] income tax return, and the Bureau modified the NODD to match the amount of the gain reported by the taxpayers on the [Redacted] return. The Bureau also made an adjustment to the NODD to allow the taxpayers the Idaho Capital Gains deduction. The Commission, having reviewed the file, hereby issues its decision upholding the modifying NODD.

The Bureau received information that showed the taxpayers sold real property in Idaho in 2008 for \$315,000. The Bureau researched Commission records and found the taxpayers did not file an Idaho individual tax return for taxable year 2008. 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.

The Bureau sent the taxpayer a letter asking them about the sale of the Idaho property and their requirement to file an Idaho income tax return. The taxpayers did not respond. A second letter was sent to the taxpayers again, receiving no response. Therefore, the Bureau prepared a return for the taxpayers, and sent them an NODD based on the information available to the Commission.

Upon receipt of the NODD, the taxpayers submitted a copy of their 2008 [Redacted] income tax return which showed the taxpayers' basis in the property and a gain of \$190,788. Based on this information, the Bureau sent the taxpayers a modified NODD along with a protest withdrawal statement for their signature, in the event they wished to accept the modified NODD and discontinue the appeals process. The Bureau received no further contact from the taxpayers and forwarded their file to the Legal/Tax Policy Division of the Commission for administrative review.

The Commission sent the taxpayers a letter giving them two options for having the NODD redetermined. The taxpayers did not respond, and have not provided any additional information for the Commission's consideration.

The Idaho Code is clear in section 63-3026A (3)(ii) that income resulting from the disposition of real property in Idaho is Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The threshold for nonresident individuals for taxable year 2008 was \$2,500. Therefore, if the taxpayers realized a gain from the sale of the Idaho property in excess of \$2,500, they are required to file an Idaho income tax return.

Information available to the Commission shows the taxpayers sold Idaho property in 2008. The [Redacted] income tax return provided by the taxpayers shows a gain from this sale

of \$190,788. This amount exceeds the filing requirements of Idaho Code section 63-3030; therefore, the taxpayers are required to file an Idaho income tax return.

Idaho Code section 63-3022H provides taxpayers under certain circumstances an Idaho capital gains deduction as follows:

63-3022H. Deduction of capital gains. (1) If an individual taxpayer reports a net capital gain in determining taxable income, sixty percent (60%) of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.

(2) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. Net capital 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) As used in this section “qualified property” means the following property having an Idaho situs at the time of sale:

- (a) Real property held at least eighteen (18) months;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;
- (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;
- (d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the internal revenue code) for the taxable year is from farming or ranching operations in Idaho;
- (e) Timber grown in Idaho and held at least twenty-four (24) months;
- (f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the internal revenue code shall apply, except that when the holding period includes any period during which the taxpayer held property other than the property sold, all property held during the holding period must qualify under this section.

(4) If an individual reports a capital gain from qualified property from an S corporation or a partnership, a deduction shall be allowed under this section only to the extent the individual held his interest in the income of the S corporation or the partnership for the time required by subsection (3) of this section for the property sold.

(5) If an individual reports a capital gain from an estate, no deduction shall be allowed under this section unless the holding period required in

subsection (3) of this section was satisfied by the decedent, the estate, or the beneficiary, or a combination thereof.

(6) If an individual reports a capital gain from a trust, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the grantor, the trust, or the beneficiary, or a combination thereof.

(7) As used in this section "revenue-producing enterprise" means:

- (a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;
- (b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;
- (c) The feeding of livestock at a feedlot;
- (d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

According to the taxpayers' 2008 [Redacted] income tax return, the Idaho property sold in taxable year 2008 was acquired in February 2001. Therefore, the taxpayers would be entitled to the Idaho capital gains deduction of 60 percent.

The Bureau modified the Notice of Deficiency Determination dated January 9, 2013, to reflect the taxpayers' basis in the Idaho property, and to allow the taxpayers the Idaho capital gains deduction. The Commission agrees with these adjustments.

THEREFORE, the Notice of Deficiency Determination dated January 9, 2013, and directed to [Redacted], as modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED that the taxpayers pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$2,456	\$614	\$489	<u>\$3,559</u>

Interest is calculated through November 1, 2013.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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.
