

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23965 & 24997
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (petitioners) protest the Notices of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated March 31, 2011, and March 27, 2012. The Notice of Deficiency Determination (NODD) dated March 31, 2011 asserted additional liability for Idaho income tax and interest in the total amount of \$2,677 for 2007. The Notice of Deficiency Determination (NODD) dated March 27, 2012 asserted additional liability for Idaho income tax, penalty, and interest in the total amount of \$7,586 for 2008.

For both years, the issue is the same. That is, whether the property producing the gains was qualified property pursuant to Idaho Code § 63-3022H. This will be determinative of whether the gains in question qualify for the Idaho capital gains deduction. The petitioners claimed the deduction. The auditor contends that the petitioners have failed to document that the property in question was qualifying property.

Idaho Code § 63-3022H stated, in pertinent part:

Deduction of capital gains **Error! Bookmark not defined.** (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) 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 twelve (12) months;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;

\* \* \*

(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.

With regard to the disallowance of the capital gain for 2007, an attorney-in-fact for the petitioners made the following unsupported statement:

Each item sold is either real property or tangible personal property used in a revenue-producing enterprise (producing agricultural products), or a personal residence and buildings that would otherwise be excluded from tax per IRC 121.

For 2008, the petitioners claim that they should be entitled to more capital gains deduction than was originally claimed. They claimed a capital gains deduction in the amount of \$76,862. The petitioners claim that they are entitled to a capital gains deduction in the amount of \$179,327. No foundation was supplied for this position.

The petitioners did not file a Schedule F (Profit or Loss From Farming) for either 2007 or 2008. They did file Schedules C (Profit or Loss From Business). The “Principal business or profession” listed on the returns was “[Redacted].”

In regard to the allowance of deductions, the U. S. Supreme Court stated:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

\* \* \*

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Company, Inc., 292 U.S. 435, 440 (1934).

Also with regard to deductions, the U. S. Tax Court stated:

#### I. Burden of Proof Generally

[1] [2] We begin with the burden of proof. The Commissioner's determinations in a deficiency notice are presumed correct, and the taxpayer bears the burden of proving otherwise. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115, 54 S.Ct. 8, 78 L.Ed. 212 (1933). Deductions are generally a matter of legislative grace, and the taxpayer bears the burden of proving he or she is entitled to claimed deductions. 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 (1934). Petitioner likewise carries the burden of substantiation. Hradesky v. Commissioner, 65 T.C. 87, 90, 1975 WL 3047 (1975), aff'd per curiam, 540 F.2d 821 (5th Cir.1976). A taxpayer must substantiate amounts claimed as deductions by maintaining the records necessary to establish that he or she is entitled to the deductions. Sec. 6001; Hradesky v. Commissioner, 65 T.C. at 90. The Court need not accept a taxpayer's self-serving testimony when the taxpayer fails to present corroborative evidence. Beam v. Commissioner, T.C. Memo.1990-304 (citing Tokarski v. Commissioner, 87 T.C. 74, 77, 1986 WL 22155 (1986)), aff'd without published opinion, 956 F.2d 1166 (9th Cir.1992).

Seiffert v. Commissioner, T.C. Memo 2014-4.

For both 2007 and 2008, the petitioners offer only unsupported self-serving statements concerning the use of the assets here in question. The U. S. Tax Court stated the following with regard to information in possession of the taxpayer which had not been submitted:

Petitioner has not established the factual allegations in its petition which are material and essential. Respondent was under no obligation to introduce evidence to rebut a fact alleged but not proven by petitioner. Short v. Philadelphia B. & W. R. Co., 23 Del. 108; 76 Atl. 363. The rule is well established that the failure of a party to introduce evidence within his possession and which, if true, would be favorable to him, gives rise to the presumption that if produced it would be unfavorable. Walz v. Fidelity-Phoenix Fire Ins. Co. of New York, 10 Fed.(2d) 22; certiorari denied, 271 U.S. 665; Equipment Acceptance Corporation v. Arwood Can Mfg. Co., 117 Fed. (2d) 442; Hann v. Venetian Blind Corporation, 111 Fed.(2d) 455; Bomeisler v. Jacobson & Sons Trust, 118 Fed.(2d) 261; Sears, Roebuck & Co. v. Peterson, 76 Fed.(2d) 243. This is especially true where, as here, the party failing to produce the evidence has the burden of proof or the other

party to the proceeding has established a prima facie case. Moore v. Giffen, 110 Cal.A. 659; 294 Pac. 730; Indianapolis & Cincinnati Traction Co. v. Montfort, 80 Ind.A. 639; 139 N.E. 677.

Witchita Terminal Elevator Company v. Commissioner, 6 T.C. 1158 (1946), affd. 162 F.2d 513 (10<sup>th</sup> Cir. 1947).

The petitioners have failed to carry their burden of proof that the property in question was “qualified property” under Idaho Code § 63-3029H(3). Accordingly, the adjustments made by the auditor are affirmed.

The petitioners also claimed that they were entitled to an additional amount as an Idaho capital gain deduction for 2008. While they did not identify the additional property or gain which they were contending qualified for the deduction, it is apparent that they are contending that the recapture of depreciation (ordinary income) reported on Form 4797 qualified for the deduction. As was stated above, the petitioners did not cite any authority to support this position.

Idaho Code § 63-3022H(2) states that “[g]ains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section.” The clear language of the law precludes this additional deduction sought by the petitioners.

THEREFORE, the Notices of Deficiency Determination dated March 31, 2011, and March 27, 2012, are hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED, and THIS DOES ORDER, that the petitioners pay the following tax, penalty, and interest (computed to November 15, 2014):

YEAR	TAX	PENALTY	INTEREST	TOTAL
2007	\$2,292	\$ 0	\$ 526	\$ 2,818
2008	5,868	880	1,056	<u>7,804</u>
				<u>\$10,622</u>

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 \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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.  
  
\_\_\_\_\_