

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25376
)
)
Petitioner.) DECISION
)
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated September 24, 2012, asserting income tax, penalty, and interest in the total amount of \$36,833 for taxable year 2007. Petitioner disagreed with the computation of the gain on the sale of his Idaho property. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner is a resident of the state of [Redacted]. In 2007, Petitioner sold real property located in Idaho. The Income Tax Audit Bureau (Bureau) researched the Tax Commission’s records and found Petitioner did not file an Idaho individual income tax return for that year. The Bureau sent Petitioner letters asking about the sale of his Idaho property and his requirement to file an Idaho income tax return. Petitioner did not respond to the Bureau’s letters, so the Bureau reviewed the information available, determined Petitioner was required to file an Idaho income tax return, prepared a return for Petitioner, and sent him a Notice of Deficiency Determination.

Petitioner responded to the Notice of Deficiency Determination, requesting an extension of time to get a copy of his 2007 [Redacted] income tax return. The Bureau acknowledged Petitioner’s request and treated it as a protest of the Bureau’s determination. The Bureau allowed Petitioner additional time to get the information he needed. The Bureau stayed in contact with Petitioner and on January 2, 2013, Petitioner sent the Bureau an e-mail stating he had received a copy of his 2007 [Redacted] income tax return and that he would be taking it to

his accountant the next day. Petitioner also stated he would be contacting an attorney in Boise and that he would contact the Bureau the following Monday to let it know what information he would be sending.

However, Petitioner did not follow up with the Bureau, so the Bureau contacted Petitioner and asked about the additional information. Petitioner stated the information was not sent because of an illness, but it would be sent later that week; nevertheless, the Bureau received no information. The Bureau contacted Petitioner again and gave him a final date on which to provide the information to the Bureau. Petitioner did not respond nor did he send the additional information. Since Petitioner protested, the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner did not respond. Seeing that Petitioner apparently had additional information to submit and was given more than adequate time to provide that information to either the Bureau or the Tax Commission, the Tax Commission decided the matter on the information 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 2007, Petitioner sold property in Idaho with a sales price of \$330,000. This information was provided via a 1099S informational return.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2007, 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, he was required to file an Idaho income tax return.

Because Petitioner failed to respond to the Bureau's inquiries, the Bureau determined Petitioner's Idaho taxable income solely upon the sales price of the property sold. Petitioner did not argue this was incorrect. Petitioner's only statement regarding the matter was that he was going to get a copy of his 2007 [Redacted] income tax return. Petitioner did not give a factual or legal basis the Bureau's determination was incorrect. Petitioner did not have a valid protest. (See Idaho Administrative and Enforcement Rule IDAPA 35.02.01.320.) Nevertheless, Petitioner's response was treated as a protest and Petitioner was given the opportunity to provide whatever additional information he wanted for a redetermination.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). Petitioner failed to provide anything to contest the computation of the gain on the sale of the Idaho property. Petitioner did not meet his burden.

Even though it is unreasonable to assume Petitioner had no basis in the property sold, the Tax Commission is reluctant to give Petitioner a basis when nothing is known about the property sold. The Tax Commission does not know if the property was vacation property or rental property, and if rental property, how long did Petitioner hold the property for depreciation. Petitioner had the opportunity to document his basis and failed to do so. Consequently, the Tax Commission will not venture to guess at Petitioner's basis.

CONCLUSION

In 2007, Petitioner sold Idaho property, thereby producing income from an Idaho source. Petitioner was given the opportunity to establish his basis in the property which would have reduced the gain determined by the Bureau. Petitioner, for whatever reason, chose not to document his basis. If a taxpayer is unable, or chooses not to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931). As a result, Petitioner's Idaho source income exceeded the threshold for filing an Idaho income tax return for 2007; Petitioner was required to file a 2007 Idaho income tax return. Therefore, based upon the information available, the Tax Commission upholds the Bureau's determination of Petitioner's Idaho taxable income.

The Bureau also added interest and penalty to Petitioner's Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated September 24, 2012, and directed to [Redacted] is AFFIRMED.

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>
2007	\$24,932	\$6,233	\$7,375	\$38,540

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 _____ 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.