BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 25553
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated January 9, 2013, asserting income tax, penalty, and interest in the total amount of $6,169 for taxable year 2006. Petitioner disagreed with the gain determined on the sale of his Idaho property and that he was required to pay an income tax. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner is a non-resident of Idaho. The Income Tax Audit Bureau (Bureau) received information that showed Petitioner sold real property located in Idaho in 2006 with a selling price of $63,000. 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 his requirement to file an Idaho income tax return. Petitioner responded that the sale was several years ago and he did not have the purchase and sale documents anymore. Petitioner asked the Bureau what he could do. The Bureau continued to correspond with Petitioner giving him some guidance for getting documentation. In the messages Petitioner sent the Bureau, he stated he purchased the property in 1989 for $7,000 and he received about $59,000 after fees and back taxes on the sale of the property. However, Petitioner stated he could not produce documents to prove his statements.

When the Bureau determined it was not making any progress with Petitioner in getting documentation, the Bureau prepared a 2006 Idaho income tax return for Petitioner, based upon the sales price of the property, and sent him a Notice of Deficiency Determination. That determination was in some way in error, so the Bureau cancelled the Notice of Deficiency Determination on July 10, 2012, and issued a corrected Notice of Deficiency Determination on January 9, 2013.

Petitioner protested both Notices of Deficiency Determination. Initially, Petitioner argued the computed tax was too high, but later Petitioner argued there is no provision in the U.S constitution providing for an income tax. The Bureau acknowledged Petitioner's protest and referred the matter for administrative review.

The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The Tax Commission also asked Petitioner to be prepared to substantiate his basis in the property sold. Petitioner did not respond, so the Tax Commission decided the matter based upon 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 2006, Petitioner sold property located in Idaho. The sales price of the property was $63,000 as evidenced by a form 1099S and somewhat confirmed by Petitioner.

Idaho Code section 63-3030 sets forth the filing requirements for non-residents that have income from Idaho sources. For taxable year 2006, the threshold amount for filing a non-resident 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.

The Bureau's determination of Petitioner's Idaho taxable income was based solely upon the sales price of the Idaho property. The Bureau did not allow for basis or any costs associated with the sale. However, in an e-mail to the Bureau, Petitioner stated he purchased the property for $7,000 in 1989. This information was provided prior to Petitioner's constitutional argument, so the Tax Commission perceived Petitioner's statement as fact, and not tainted by some tax avoidance scheme. As a result, the Tax Commission accepts the $7,000 figure as a starting point for determining Petitioner's basis in the property sold. The Tax Commission also accepts the fact that Petitioner owned the property since 1989.

Petitioner also stated he paid fees and back taxes out of the proceeds of the property sale. While certain fees are deductible in determining the gain on the sale of property, back taxes are not. However, Petitioner did not, or could not, provide any documentation or other information on these amounts; consequently, no deduction is allowed. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931).

Petitioner's statement regarding the date he purchased the property appeared to be creditable. This being the case, Petitioner qualifies for the Idaho capital gain deduction. *See* Idaho Code section 63-3022H. Therefore, the Tax Commission deducted sixty (60) percent of Petitioner's gain on the sale of the property from his Idaho adjusted gross income.

Petitioner's argument that an income tax is not mentioned in the U.S. constitution and therefore he is not required to pay income tax is just a variation of similar frivolous tax protester arguments. Such "causes and beliefs" (arguments) have repeatedly been rejected by the courts and warrants no discussion from the Tax Commission. See Sego v. Commissioner, 114 T. C. 604 (2000); Nagy v. Commissioner, T. C. Memo 1996-24; Scott v. Dept. of Taxation, 2008 WL 4542978 (Vt.); United States v. Jagim, 978 F.2d 1032, 1036 (8th Cir. 1992).

CONCLUSION

Petitioner sold Idaho property in 2006, thereby producing income from an Idaho source. Petitioner's gain on the sale 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 Tax Commission reviewed the return the Bureau prepared, but because Petitioner's statements regarding the purchase price of the property and the length of time he held the property were creditable, the Tax Commission hereby modifies the Bureau's determination to account for Petitioner's basis and the Idaho capital gains deduction.

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 January 9, 2013, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

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

YEAR	TAX	PENALTY	INTEREST	TOTAL
2006	$1,211	$303	$443	$1,957

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.

_____