

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NOS. 25748 & 23203
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (Petitioners) protested the Notices of Deficiency Determination dated May 26, 2010, and April 10, 2013, asserting income tax, penalty, and interest in the amounts of \$15,544 and \$11,680, respectively for taxable years 2005, and 2008 and 2009, respectively. Petitioners disagreed with the gains determined on the sales of Idaho property and that they were required to file Idaho individual income tax returns. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners are non-residents of Idaho. The Income Tax Audit Bureau (Bureau) received information that showed Petitioners sold real property located in Idaho in 2005. The Bureau searched the Tax Commission’s records and found Petitioners did not file a 2005 Idaho individual income tax return. The Bureau sent Petitioners letters asking about the sale of the Idaho property and their requirement to file an Idaho income tax return. Petitioners did not respond, so the Bureau prepared a return for Petitioners and sent them a Notice of Deficiency Determination.

Petitioners protested the Notice of Deficiency Determination, stating they reported the sale and paid tax to [Redacted] through a corporation, [Redacted]. The Bureau corresponded with Petitioners trying to get them to provide the necessary information to determine whether Petitioners realized a gain on the 2005 sale and whether Petitioners were required to file an Idaho individual income tax return. Petitioners stated they would have to search for the purchase and sale documents

as the information was in storage. Petitioners stated the corporation and the financial institutions involved with this property were out of business, so documentation would be difficult to get.

While the Bureau was waiting and coaxing Petitioners for documentation on the 2005 property sale, information became available that showed Petitioners sold Idaho property in 2008. The Bureau sent Petitioners a letter regarding this property and began working with Petitioners to get information on the purchase and sale of the 2008 property. Petitioners stated they were having the same problems locating the information for the 2008 property sale that they were having with the 2005 property sale.

In the meantime, another Idaho property sale made by Petitioners in 2009 appeared in the Tax Commission's database. The Bureau sent Petitioners a letter regarding this property sale, to which Petitioners responded that the gains on sales of the properties in 2008 and 2009 were less than Idaho's threshold for filing income tax returns. The Bureau asked for the documentation showing the amount of gain realized, to which Petitioners replied they were still compiling their records.

The Bureau allowed Petitioners additional time to file their income tax returns or to provide information for calculating the gain or loss on the sales of the Idaho properties. Petitioners failed to provide anything. Consequently, the Bureau prepared 2008 and 2009 Idaho income tax returns for Petitioners and sent them a Notice of Deficiency Determination.

Petitioners protested the second Notice of Deficiency Determination and subsequently provided information on the purchase and improvement of the 2008 property. The Bureau reviewed the information Petitioners provided and re-determined the gain on the sale of the 2008 property. The Bureau also allowed Petitioners additional time to provide information on the 2005 property and the 2009 property, but Petitioners provided nothing. The Bureau sent Petitioners a modified

Notice of Deficiency Determination for taxable year 2008 and asked Petitioners to withdraw their protest. Petitioners did not respond, so the Bureau referred the matter for administrative review.

The Tax Commission sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The Tax Commission also asked Petitioners to be prepared to substantiate their basis in the properties sold. Petitioners requested a telephone hearing, but asked that it be deferred for several months until they could gather documentation and consult with a tax professional. The Tax Commission agreed and put the matter on hold.

After a significant amount of time had passed, the Tax Commission contacted Petitioners again and asked for the information to support their basis in the sales of the Idaho properties. Petitioners responded that the information would be sent via e-mail as soon as possible. Petitioners stated they moved and they would have to locate the paperwork in storage. The Tax Commission acknowledged Petitioners' response and waited for the documentation. The documentation never came. The Tax Commission asked Petitioners for a status update on the documentation, but Petitioners did not respond. Seeing that Petitioners have had more than adequate time to find and provide the information necessary, 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 2005, 2008, and 2009, Petitioners sold property located in Idaho. The property sold in 2005 had a sales price of \$162,000. The property sold in 2008 had a sales price of \$192,000. And, the property sold in

2009 had a sales price of \$124,900. Each of the property sales was evidenced by a form 1099S and the sales were acknowledged by Petitioners.

Idaho Code section 63-3030 sets forth the filing requirements for non-residents that have income from Idaho sources. For each of taxable years 2005, 2008, and 2009, the threshold amount for filing a non-resident return was \$2,500. Therefore, if Petitioners realized income on the sale of the Idaho property in excess of \$2,500, they were required to file an Idaho income tax return.

The Bureau's determination of Petitioners' Idaho taxable income was initially 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, after the Notice of Deficiency Determination for taxable years 2008 and 2009 was sent to Petitioners, Petitioners provided basis information for the 2008 property sale. The Bureau modified its determination for that sale, but made no changes to the sales in 2005 or 2009.

In its review of the information available, the Tax Commission saw a communication between the Bureau and Petitioners wherein Petitioners stated the approximate purchase price of the properties sold in 2008 and 2009. Petitioners stated they purchased the 2008 property for around \$125,000 and the 2009 property for around \$90,000. Petitioners also stated an amount for improvements to each of the properties. The Tax Commission considered these statements and in light of the documentation provided establishing the purchase price of the 2008 property, the Tax Commission accepts the \$90,000 figure as a starting point for determining Petitioners' basis in the 2009 property sold.

Petitioners also stated they paid for improvements to the properties. While improvements to property are includable in determining basis in the property, Petitioners could only document

the improvements made to the 2008 property. Consequently, no basis additions are allowed for the 2009 property. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931).

Petitioners provided no additional information or documentation regarding the property sale in taxable year 2005.

CONCLUSION

Petitioners sold Idaho property in 2005, 2008, and 2009, thereby producing income from an Idaho source. Based upon the information available, Petitioners' gains on the sales exceeded the threshold for filing Idaho income tax returns for each of the taxable years, therefore, Petitioners were required to file Idaho income tax returns. However, because Petitioners provided documentation and/or information regarding the property sales in 2008 and 2009, the Tax Commission hereby modifies the Bureau's determination to account for basis in the properties sold in 2008 and 2009. But, since Petitioners failed to produce any information on the 2005 property sale, the Tax Commission is not inclined to guess at Petitioners' basis. Petitioners failed to meet their burden of proof in this regard, therefore, the Tax Commission upholds the Bureau's determination for taxable year 2005.

The Bureau added interest and penalty to Petitioners' Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate. *See* Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Notice of Deficiency Determination dated May 26, 2010, and directed to [Redacted] and [Redacted] is AFFIRMED.

THEREFORE, the Notice of Deficiency Determination dated April 10, 2013, and directed to [Redacted], is AFFIRMED as MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$10,282	\$2,571	\$4,422	\$17,275
2008	661	165	155	981
2009	1,737	434	318	<u>2,489</u>
			TOTAL DUE	<u>\$20,745</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.
