

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25690
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated March 27, 2013. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax and interest in the total amounts of \$739 and \$1,532 for 2009 and 2010, respectively.

The auditor made one adjustment to each of the returns of the petitioners. For 2009, the auditor disallowed \$656 of investment tax credit. For 2010, the auditor disallowed the Idaho capital gains deduction relating to a gain from the sale of a conservation easement.

The auditor recomputed the petitioners' Idaho investment tax credit carried forward from 2008. The adjustment was due to the petitioners having claimed accelerated depreciation pursuant to Internal Revenue Code § 168(k) or Internal Revenue Code § 179. Idaho Code § 63-3029B provided authority for the allowance of the Idaho investment tax credit. It stated, in part:

(8) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the Internal Revenue Code shall be disregarded. "Qualified investment" shall not include any amount for which a deduction is allowed under section 168(k) or section 179 of the Internal Revenue Code in computing taxable income.

The petitioners did not express an objection to this adjustment in their protest letter and have not subsequently provided argument or authority to show that the auditor's adjustment was incorrect. Accordingly, this adjustment is affirmed.

The adjustment for 2010 was to disallow the Idaho capital gains deduction with regard to gain from the disposition of a conservation easement. Administrative Rule 171.05.vii (relating to Idaho Code § 63-3022H) specifically provided that conservation easements did not qualify for the Idaho capital gains deduction. Accordingly, the auditor disallowed the Idaho capital gains deduction.

In the 2015 legislature, House Bill 109a specifically provided that conservation easements did qualify for this deduction. The bill had an effective date of January 1, 2010. Accordingly, the gain from the conservation easement at issue in this docket qualifies for the Idaho capital gains deduction. Accordingly, this adjustment made by the auditor is reversed.

THEREFORE, the Notice of Deficiency Determination dated March 27, 2013 is hereby MODIFIED and as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to September 15, 2015):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$656	\$140	\$ 796

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 _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
