

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 30875
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated September 17, 2014, asserting income tax, penalty, and interest in the total amount of \$16,405 for taxable years 2006, 2007, and 2008. 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 was a nonresident of Idaho during 2006, 2007, and 2008. The Income Tax Audit Bureau (Bureau) received information that showed Petitioner sold real property located in Idaho in 2006 for \$107,500; in 2007, Petitioner sold real property located in Idaho for \$73,000; and in 2008, Petitioner sold real property located in Idaho for \$47,500. The Bureau searched the Tax Commission’s records and found Petitioner did not file Idaho individual income tax returns for 2006, 2007, and 2008.

The Bureau sent Petitioner a letter on November 11, 2011, asking about the sale of the Idaho property and his requirement to file an Idaho income tax return. The Bureau continued to send letters to Petitioner asking about the sale of the Idaho property until November 26, 2013. When the Petitioner failed to respond to the letters sent by the Bureau, the Bureau prepared 2006, 2007, and 2008 Idaho income tax returns for Petitioner based upon the sales price of the properties; the Bureau sent Petitioner a Notice of Deficiency Determination on February 14, 2014. The Bureau asserted

Petitioner owed income tax, penalty, and interest in the total amount of \$22,087 for taxable years 2006, 2007, and 2008.

On March 25, 2014, the Bureau received an executed Power of Attorney form from a Certified Public Accountant (CPA). On March 26, 2014, the Bureau received a notice of protest from the CPA. The CPA told the Bureau he would be available to begin working on the audit on April 18, 2014. On April 24, 2014, the CPA sent the Bureau a fax listing the cost breakdown on the real properties that were sold in 2006, 2007, and 2008 in order to establish basis for the property. On April 30, 2014, the Bureau requested supporting documentation for the cost basis figures provided. On June 9, 2014, the CPA stated that Petitioner did not have the original purchase documentation; that same day, the Bureau told the CPA that the Bureau would access county records where the land was located in order to verify basis of the land that was sold. In addition, the CPA requested and was granted several extensions in order to obtain the requested documentation needed to verify the basis claimed by Petitioner.

When the Bureau determined it was not making any progress with Petitioner in getting needed documentation for basis verification, the Bureau sent Petitioner a Modified Notice of Deficiency Determination (NODD) on September 17, 2014. Based on county records, the Bureau determined that the basis in each lot was \$10,219; the Bureau also obtained copies of final closing statements that showed selling costs for each of the properties. The Bureau determined the following: (1) In 2006, Petitioner sold two lots located in Idaho for a gross sales price of \$107,500; the Bureau determined that basis in the property was \$20,438; after deducting selling costs, the Bureau determined that gain on the property was \$79,728. (2) In 2008, Petitioner sold one lot located in Idaho for a gross sales price of \$73,000; the Bureau determined that basis in the property was \$10,219; after deducting selling costs, the Bureau determined that gain on the

property was \$57,890. (3) In 2007, Petitioner sold one lot located in Idaho for a gross sales price of \$47,500; the Bureau was unable to determine basis in the property; after deducting selling costs, the Bureau determined that gain on the property was \$34,431. As of September 17, 2014, the Bureau asserted Petitioner owed income tax, penalty, and interest in the total amount of \$16,405 for taxable years 2006, 2007, and 2008.

When the Bureau did not get a response from Petitioner, the Bureau transferred the file to the Legal/Tax Policy Division of the Tax Commission for administrative review. The Tax Commission sent Petitioner a letter on March 2, 2015, that discussed the methods available for redetermining a protested Notice of Deficiency Determination. 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, 2007, and 2008, Petitioner sold property located in Idaho. The sales price of the property in 2006 was \$107,500; the sales price of the property in 2007 was \$73,000, and the sales price of the property in 2008 was \$47,500. These sales prices were confirmed by forms 1099-S for years 2006, 2007, and 2008.

Idaho Code section 63-3030 sets forth the filing requirements for non-residents that have income from Idaho sources. For taxable years 2006, 2007, and 2008 the threshold amount for filing a non-resident return was \$2,500. Therefore, if Petitioner realized income on the sale of Idaho property in excess of \$2,500 during 2006, 2007, and/or 2008, Petitioner was required to file an Idaho income tax return for each year in which his Idaho income exceeded \$2,500.

The Bureau's determination of Petitioner's Idaho taxable income was based solely upon the sales price of the Idaho property less Bureau-determined basis and allowable costs. Petitioner was a partner in [Redacted]; flow-through losses and gains from the partnership were considered in the Bureau's determination of Petitioner's taxable income for 2006, 2007, and 2008.

CONCLUSION

Petitioner sold Idaho property in 2006, 2007, and 2008, thereby producing income from an Idaho source; Petitioner also recognized flow-through losses and gains from the partnership [Redacted]. Petitioner's taxable income, including gain on the sales of real property exceeded the threshold for filing an Idaho income tax return for 2006, 2007, and 2008; therefore, Petitioner was required to file 2006, 2007, and 2008 Idaho income tax returns.

The Tax Commission reviewed the return the Bureau prepared, and found the return credible. 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 as of September 17, 2015, and directed to [Redacted] is MODIFIED and AFFIRMED by this decision.

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>
2006	\$5,163	\$1,291	\$2,384	\$ 8,838
2007	3,154	789	1,255	5,198
2008	2,142	536	695	<u>3,373</u>
			TOTAL DUE	\$17,409

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 _____ 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.
