

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of )  
 ) DOCKET NO. 1-962-119-168  
[REDACTED], )  
 )  
 )  
 ) Petitioners. ) DECISION  
 )  
\_\_\_\_\_ )

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated April 2, 2015, asserting additional liabilities for Idaho income tax, penalty, and interest in the total amount of \$3,300 for 2011.

Mr. [Redacted] was a 25 percent partner in [REDACTED], an Idaho partnership, which owned an office building in [Redacted], Idaho. In taxable year 2011, the petitioners claimed the Idaho capital gains deduction showing on Form CG, the sale of the [REDACTED] building. The auditor disallowed the capital gains deduction. Whether this deduction should be allowed is the sole issue to be decided for this docket.

In 2011 Mr. [Redacted] transferred his ownership in real property, the [REDACTED] building, to the other partners in [REDACTED], as evidenced by the quit-claim deed provided by the petitioners. The petitioners contend that since the property was located in Idaho and the holding period was met, it should therefore qualify for the Idaho capital gains deduction.

Idaho Code § 63-3022H sets forth the authority for the deduction sought. It states [2007], in part:

Deduction of capital gains. (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains

treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) As used in this section “qualified property” means the following property having an Idaho situs at the time of sale:

- (a) Real property held at least twelve (12) months;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue producing enterprise;
- (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty four (24) months if more than one half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
- (d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
- (e) Timber grown in Idaho and held at least twenty four (24) months;

The auditor disallowed the Idaho capital gains deduction asserting that what the petitioners sold in 2011, was Mr. [Redacted] partnership interest rather than qualifying real property. This determination was based not solely on the quit-claim deed, but also other information shown on the petitioners’ 2011 Idaho individual income tax return and the [REDACTED] partnership return. Form 8949, which provides details of sales and distributions of capital assets, identifies the property sold as “[REDACTED] partnership interest.” The 2011 schedule K-1 from [REDACTED] shows the petitioners’ ownership percentage went from 25 percent at the beginning of the year, to zero at year-end. Also included with the partnership return are Forms 8308 which, according to the instructions, are “filed by a partnership to report the sale or exchange by a partner of all or part of a partnership interest where any money or other property received in exchange for the interest is attributable to unrealized receivables or inventory items....” Based on this documentation, it seems clear that what the petitioners sold in 2011 was Mr. [Redacted] interest in the [REDACTED] partnership.

Also if the petitioners are contending that real property was sold, presumably there would be sales documents. Copies of applicable sales documents were requested by the auditor, but to date none have been provided.

The Commission finds that the capital gain included in the petitioners' taxable income for 2011, results from the sale of Mr. [Redacted] partnership interest in [REDACTED]. The sale of an interest in a partnership that owns real property does not equate to the sale of real property or an interest in real property. A partnership interest is an intangible asset, therefore, not qualifying property for purposes of the Idaho capital gains deduction.

THEREFORE, the Notice of Deficiency Determination dated April 2, 2015, is hereby APPROVED and MADE FINAL.

IT IS ORDERED that the petitioners pay the following tax and interest (computed to June 6, 2016):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$2,954	\$460	\$3,414

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 \_\_\_\_\_ 2016.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2016, 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.

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