

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
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 , ) DOCKET NO. 0-045-250-560  
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 Petitioners. ) DECISION  
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(Petitioners) protested the Notice of Deficiency Determination dated November 30, 2021. Petitioners disagreed that any tax was owed to Idaho. Petitioners stated they paid tax on the sale of the property to Indiana and under the “reciprocal agreement” between Indiana and Idaho they should not have to pay Idaho tax on the sale. The Tax Commission reviewed the information Petitioners provided and hereby issues its decision modifying the Notice of Deficiency Determination.

BACKGROUND

Petitioners are nonresidents of Idaho. Petitioners filed a nonresident Idaho income tax return for tax year 2020 reporting the sale of property in Idaho. Petitioners reported the gain on the sale and computed their Idaho taxable income. However, when it came to computing the tax, Petitioners reported zero tax owed. During the processing of Petitioners’ return, their return was identified as a return with an error. Taxpayer Accounting reviewed Petitioners’ return, corrected the error, and sent Petitioners a Notice of Deficiency Determination.

Petitioners protested Taxpayer Accounting’s correction stating they paid the tax on the gain to their home state of Indiana. Petitioners stated they should not have to pay double tax to Idaho because of the states’ reciprocal agreement. Taxpayer Accounting acknowledged Petitioners’ protest and referred the matter to the Tax Commission’s Appeals Unit (Appeals).

Appeals reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners contacted Appeals and provided documentation showing Petitioners reported the sale on their Indiana income tax return and paid tax on the gain.

### LAW AND ANALYSIS

Idaho Code section 63-3002 states the intent of the Idaho legislature regarding the Idaho income tax act; “to impose a tax on residents of this state measured by Idaho taxable income wherever derived and, on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state.”

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.

Idaho Code section 63-3030 sets forth the filing requirements for nonresidents that have income from Idaho sources. For taxable year 2020 the threshold amount for filing a nonresident return was \$2,500. Therefore, if Petitioners realized income on the sale of their Idaho property in excess of \$2,500, they were required to file an Idaho income tax return and pay a tax on the resulting gain.

Petitioners sold rental property in Idaho and reported a capital gain from the sale of \$143,000. Petitioners also reported ordinary income from the sale of \$11,363. Petitioners reported the capital gain portion of the sale to Idaho but did not report the ordinary income portion of the sale on their Idaho return.

Petitioners stated and documented that they reported and paid tax to the state of Indiana on the sale of the property. Petitioners stated they should not be double taxed on the sale and implied that Idaho should settle up with Indiana through its reciprocal agreement with Indiana.

Reciprocity (reciprocal) agreements mean that two states allow its residents to only pay tax where they live, rather than where they work. Indiana has reciprocal agreements with Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin, but not with Idaho. *See* TaxAct, “States - Reciprocal Agreements”, <https://www.taxact.com/support/17826/2020/states-reciprocal-agreements>, TaxAct, 2020, June 10, 2022.

Idaho does have a credit for taxes paid to other states, Idaho Code section 63-3029; however, the credit is available only to residents and part-year residents. Nonresidents do not get the credit. Nonresidents must file with their state of residence and claim a similar credit if available.

Taxpayer Accounting’s correction of Petitioners’ return only included adding the tax amount to the return based on Petitioners’ computation of Idaho taxable income. Taxpayer Accounting did not look into Petitioners’ computation of Idaho taxable income. However, as part of the appeal process, the Tax Commission did consider the make-up of Petitioners’ Idaho taxable income to determine the correctness of sourcing the income to Idaho. The Tax Commission found the income was properly sourced to Idaho; however, not all the income from the sale was sourced to Idaho and some other income was improperly sourced to Idaho.

Petitioners reported a capital gain on their federal income tax return from the sale of Idaho property and the capital gain portion of an installment sale of a non-Idaho property. Petitioners carried the total amount of their capital gain to their Idaho return. However, Idaho can only tax the income from Idaho sources. Therefore, the Tax Commission adjusted the capital gain reported to Idaho to the gain from Idaho sources.

Petitioners also reported on their federal income tax return ordinary income on the sale of their Idaho property. Petitioners did not report this income on their Idaho return. Since the ordinary income portion of the sale is also Idaho source income, the Tax Commission adds this income to Petitioners' Idaho taxable income.

In addition to the Tax Commission correcting the income source to Idaho, the Tax Commission looked at the length of time Petitioners held the Idaho property (the holding period). Petitioners reported that they acquired the Idaho property in September 2017. Petitioners reported the Idaho property sold in March 2020. Petitioners held the property for approximately 2 ½ years.

Idaho Code section 63-3022H provides that if an individual taxpayer has capital gain net income in determining taxable income, sixty percent (60%) of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income. Qualified property includes real property, located in Idaho, held at least twelve (12) months. Since Petitioners' holding period for the Idaho property was more than 12 months, Petitioners get the benefit of the Idaho capital gains deduction and can exclude 60% of the capital gain on the sale. Therefore, the Tax Commission allows an adjustment to Petitioners' taxable income excluding 60% of the capital gain on the sale of the Idaho property.

#### CONCLUSION

Petitioners received income from an Idaho source, the sale of Idaho property. Petitioners' gain from the sale exceeded the threshold for filing a nonresident Idaho individual income tax return. Idaho does not have a reciprocity agreement with Petitioners' resident state of Indiana and Petitioners are not eligible for the Idaho credit for taxes paid to another state. However, because Petitioners held the Idaho property long enough for it to become qualified property, Petitioners can exclude a portion of the capital gain on the sale of the property. Petitioners also realized ordinary

income on the sale of the property. Because the property is located in Idaho, the ordinary income from the sale is considered Idaho source income and taxable by Idaho.

The correction made by Taxpayer Accounting only computed the tax on the capital gain reported by Petitioners. Taxpayer Accounting's correction did not account for the capital gain deduction or include the ordinary income portion of the sale. Therefore, the Tax Commission modifies the Notice of Deficiency Determination to incorporate these findings.

Taxpayer Accounting 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 Tax Commission AFFIRMS as MODIFIED the Notice of Deficiency Determination dated November 30, 2021, directed to

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>
2020	\$1,683	\$261	\$62	\$2,006

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioners' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022,  
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:

Receipt No.

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