

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-345-045-504
)	
Petitioner.)	DECISION
_____)	

The Income Tax Audit Bureau (Bureau) at the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (Notice) to (Petitioner) for tax year 2019. Petitioner filed a timely appeal and petition for redetermination of the Notice. The primary issue for decision is whether Petitioner qualifies for the Idaho capital gains deduction. Petitioner submitted additional information and participated in an informal hearing during the appeals process. The Tax Commission has reviewed the file and hereby issues its decision.

BACKGROUND

Petitioner filed an Idaho resident individual income tax return, reported a \$17,310 capital gain distribution on the sale of an Oregon property, and claimed a \$17,130 Idaho capital gains deduction on the sale of Oregon property. The Bureau determined Petitioner didn't qualify for the deduction and issued a Notice. Petitioner disagreed with the Bureau's determination and filed an appeal.

LAW

Idaho Capital Gains Deduction

Idaho Code section 63-3022H allows a deduction for qualifying property and explains the rules and limitations for claiming the deduction. In pertinent part, to qualify for the deduction, real

property must be located in Idaho and held for at least twelve months. Real property located outside of Idaho doesn't qualify. Idaho Code section 63-3022H(3).

Assignment of Income

The assignment of income doctrine provides all income earned from services provided by an entity is to be taxed to that entity and income from property is to be taxed to the entity that owns the property. Merely directing payment of income (i.e., assigning income) that has been earned by one entity to another, although legal, does not relieve the owner of the income from paying tax. See *Lucas v. Earl*, 281 U.S. 111 (1930). Thus, it is not possible to avoid the payment of tax on capital gains by simply having them paid to someone else. Although a taxpayer may legally assign the right to receive income to another, the income tax is imposed on the person who earns the income.

All Inclusive Income

The all-inclusive income concept provides all income is taxable unless some specific provision can be found in the tax law that excludes the items in question from taxation. See Internal Revenue Code (IRC) section 61.

Legislative Grace

Any tax relief provided to taxpayers is the result of specific acts of Congress that must be strictly applied and interpreted. All income received is taxable unless a specific provision can be found in tax law that excludes the income from taxation. It is well established in tax law that a taxpayer claiming a deduction, exemption or credit bears the burden of establishing his or its entitlement to the same, both as to law and fact. See *New Colonial Ice Co. v. Helvering* 292, U.S. 435 (1934); and Idaho Code section 63-3042.

PETITIONER'S POSITION

During the informal hearing, Petitioner conceded that he didn't qualify for the Idaho capital gains deduction under Idaho Code section 63-3022H. However, Petitioner didn't withdraw his appeal. Instead, Petitioner argued: (1) he wasn't the owner of the property, and the income didn't belong to him; (2) his mother was the owner of the property, and the income belonged to her; and (3) his accountant made a mistake by including the income on his tax return.

ANALYSIS

Petitioner doesn't qualify for the Idaho capital gains deduction. Idaho Code section 63-3022H clearly states for real property to qualify for the deduction, the property must be located in Idaho. Petitioner claimed the Idaho capital gains deduction for a property located in Oregon. Therefore, the Tax Commission finds Petitioner doesn't qualify for the Idaho capital gains deduction.

Petitioner was the owner of the property and the income belonged to him. According to real estate documents (deeds, closing disclosure, title documents, etc.) Petitioner was the owner of the property at the time of the sale. Records show Petitioner's mother transferred the property to Petitioner and his brother in July 2016. The capital gain from the sale of the property belonged to Petitioner. In accordance with the assignment of income doctrine, the fact that Petitioner assigned the income to his mother, although legal, does not relieve Petitioner from paying tax on the income. Therefore, the Tax Commission finds no grounds for removing the income from Petitioner's tax return.

Petitioner cannot avoid paying tax and interest because he relied on a tax professional. Any tax relief provided to taxpayers is the result of specific acts of legislature that must be applied and interpreted strictly. The Idaho Income Tax Act doesn't permit a taxpayer to avoid paying taxes

and interest due because of a tax preparer's mistake. The relief that Petitioner seeks is not statutorily available.

However, under Idaho Code section 63-3046, the Tax Commission may waive the negligence penalty if a taxpayer can show reasonable cause for the failure that resulted in the deficiency. The Tax Commission shall consider all factors when determining whether to waive a negligence penalty. Reliance on a tax professional is typically one of the most commonly asserted reasonable cause exceptions. In this case, based on the information available, the Tax Commission finds reasonable cause to waive the negligence penalty.

The income from the sale of the property is taxable to Petitioner. The assignment of income doctrine provides that income from property is taxed to the owner of the property. See *Lucas v. Earl*, 281 U.S. 111 (1930). In this case, Petitioner was the owner of the property in question. Therefore, the income from the sale of the property is taxable to him.

Petitioner contends his mother originally owned the property in question, his mother transferred the property to him, he had to sell the property to pay for his mother's medical and living expenses, and he never financially benefited from the sale of the property. Although this may be true, it doesn't change the fact that Petitioner was the legal owner of the property at the time of sale.

While a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, *Higgins v. Smith*, 308 U. S. 473, 477 (1940); *Old Mission Portland Cement Co. v. Helvering*, 293 U. S. 289, 293 (1934); *Gregory v. Helvering*, 293 U. S. 465, 469 (1935), and may not enjoy the benefit of some other route he might have chosen to follow but did not. "To make the taxability of the transaction depend upon the determination whether there existed an alternative form which the

statute did not tax would create burden and uncertainty.” *Founders General Corp. v. Hoey*, 300 U. S. 268, 275 (1937); *Television Industries, Inc. v. Commissioner*, 284 F. 2d 322, 325 (CA2 1960); *Interlochen Co. v. Commissioner*, 232 F. 2d 873, 877 (CA4 1956). See *Gray v. Powell*, 314 U. S. 402, 414 (1941).

Petitioner contends the payment of the deficiency would be a financial hardship. However, Petitioner has not provided documentation showing an inability to pay or that the liability would create a financial hardship. Without documentation proving a hardship, the Tax Commission cannot authorize a hardship settlement under Idaho Code sections 63-3047 and 63-3048.

CONCLUSION

A Notice of Deficiency Determination issued by the Tax Commission is presumed to be correct. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The burden is on the taxpayer to show the deficiency is erroneous. *Albertson’s, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Deductions and credits are a matter of legislative grace. *New Colonial Ice Co. v. Helvering*, 292 US. 435, 54 S.Ct. 788 (1934). The taxpayer must maintain sufficient records to allow the Tax Commission to determine its correct tax liability. IRC section 6001; Treas. Reg. section 1.6001-1(a). If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction or credit depends, the deduction or credit is not allowed. *Burnet v. Houston*, 283 US. 223, 51 S.Ct. 413 (1931).

The Tax Commission finds that Petitioner did not meet his burden of proving the deficiency erroneous. However, Petitioner did show reasonable cause for the failure that resulted in the deficiency. Therefore, the Tax Commission will waive the negligence penalty.

The Bureau added interest to the income tax deficiency. The Tax Commission reviewed the addition and found it to be appropriate per Idaho Code section 63-3045. Interest is calculated through December 11, 2023, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated February 1, 2023, is hereby MODIFIED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED that Petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2019	\$1,198	\$151	\$1,349

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

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

DATED this _____ day of _____ 2023.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2023,
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.
