

**DAVID E. & CAROLINE M. WILDIN (TRU) (2017)**

**Topic Code: C012 Capital Gain Deduction**

**Document Reference: 17201010**

May 2, 2017

David E. Wildin & Caroline M. Wildin  
1206 175th St  
Lu Verne, IA 50560-8557

RE: David E. Wildin & Caroline M. Wildin  
Docket No. 2017-200-1-0010  
Individual Income Tax Protest  
Department Number 2017013700839

Dear Mr. & Mrs. Wildin:

The Review Unit of the Iowa Department of Revenue has considered your protest. After reviewing the facts and evidence presented and the laws which apply to your protest, the Review Unit denies your protest for the following reasons:

Your protest was originally filed regarding a Notice of Assessment for Iowa income tax for the year ending December 31, 2013. The issue in the current case is regarding the denial of a capital gain deduction taken on the 2013 Iowa income tax return on the sale of a five acre piece of property located in the Kossuth County Iowa. In the protest you indicated that you purchased this land along with another similar five acre piece of land from your father's estate on April 19, 2005. You also indicated that you sold the first five acre lot in 2006. At that time through some misunderstanding the Department allowed a partial capital gain deduction for the sale of timber. The purchaser of the first five acre lot bought the lot to construct a new home to live in. Subsequent to the purchase the new owner has built a new home. The Department should not have granted the partial capital gain deduction on the first sale, as this was simply the sale of land. When the Department realized the misgivings of the first sale and the benefit that was erroneously extended to you, the statute of limitations had already expired. Therefore, the Department was unable to assess you for the partial capital gain deduction that was extended to you from the sale in 2006.

There is a provision for an Iowa capital gain exclusion for the sale of timber from property used in a business which is recognized as a capital gain in accordance with section 631(a) of the Internal Revenue Code. The real property would not be sold, but the cutting of timber which is sold and which is owned for one year or more qualifies for capital gain treatment on the federal and Iowa return. If a capital gain is reported from the sale of timber which is owned for one year or more and which meets the other qualifications in section 631(a) of the Internal Revenue Code, the capital gain from the sale of the timber can be excluded on the Iowa return as an Iowa capital gain deduction.

In the current case the purchaser of the second five acre lot also purchased this land to construct a home. This purchaser has since built a new home on this five acre lot. In the protest you have argued that you feel the Department should extend a similar capital gain deduction that you received from the first sale. In a review of the protest it seems clear that the new owner of the land from the 2013 sale purchased the land to construct a new

home. Subsequent to the land sale the new owner has built a new home. Given this information the Department asserts that this is strictly the sale of land, not the sale of timber.

For guidance in this case we look to Iowa Code § 422.7(21) as implemented in Iowa Rule 701—40.38(1) where it provides,

*“Net capital gains from the sales or exchanges of real property, tangible personal property, or other assets from a business the taxpayer has owned for ten years and in which the taxpayer materially participated as defined in Section 469(h) of the Internal Revenue Code for ten years qualify for the capital gain deduction.”*

A review of the current case shows that you did not hold the land for the requisite ten year period. Therefore, you do not qualify for the capital gain deduction. It is with the information provided above that your protest must be denied.

Please respond in writing by June 2, 2017 whether you agree with the Review Unit’s position. If you agree, or choose not to pursue the protest, then your letter and payment of the amount due, which is \$2,318.67, with interest computed through May 31, 2017, will serve as authority for the Review Unit to request the Director to close the protest. Please note that interest accrues at the rate of \$7.76 per month. Also, the amount due already reflects the abatement of the penalty.

If you disagree with the Review Unit’s position in this matter, then the Review Unit requests that you identify those areas of disagreement and provide documentation to support your position. Upon receipt of your letter, the Review Unit will file an Answer, which will initiate the process for an administrative hearing on your protest. A departmental attorney will be assigned to your protest at that time.

If no response is received by June 2, 2017, then the Review Unit will construe this inaction as failure to pursue the protest and will request dismissal of the protest pursuant to departmental rule 701 IAC 7.11(2).

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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Audit Services Section  
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