

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 14187
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On August 27, 1999, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (the petitioners), proposing additional income tax and interest for the tax years 1991, 1992, 1993, 1994, 1995, and 1996, in the total amount of \$3,237. The petitioners filed a timely protest and petition for redetermination. The petitioners did not request a hearing. The Tax Commission, having reviewed the file, hereby issues its decision.

The petitioners have requested that the Tax Commission (1) abate the penalty, (2) abate the interest, and (3) allow a deduction for a 1997 net operating loss carryback claimed in tax year 1996.

The petitioners are husband and wife and are Colorado residents. The husband was a limited partner in a partnership that was transacting business within Idaho. The partnership began business in 1991 and filed its final federal partnership return in 1997. The partnership incurred a net ordinary loss from a trade or business in the tax years 1991 through 1995. In 1996, the partnership discontinued its business operations and sold its assets at a gain. In 1997, the partnership, as a result of winding down its business operations, incurred an ordinary loss.

On March 30, 1999, the auditor informed the petitioners that the petitioners had an Idaho filing requirement for the tax year 1996.

On July 30, 1999, the petitioners provided the auditor with the following information:

- 1997 Form 43, Idaho Nonresident Income Tax Return.
- 1997 Form 56, Idaho Individual Net Operating Loss Computation

- 1996 Form 43, Idaho Nonresident Income Tax Return.
- A copy of the petitioners' 1996 and 1997 federal K-1s issued by the partnership.
- A payment of \$424 on tax year 1996.

After reviewing the information submitted by the petitioners, as well as other information contained in the file, the auditor determined that the petitioners had a filing requirement for the tax years 1991 through 1996. On August 26, 1999, the auditor issued a Notice of Deficiency Determination for the tax years 1991 through 1996. In the Notice of Deficiency Determination, the auditor disallowed the 1997 net operating loss carryback claimed on the petitioners' 1996 Idaho return since, according to the auditor, the partnership "had no Idaho operations for 1997."

The petitioners protest the disallowance of the 1997 net operating loss carryback to tax year 1996. It is the petitioners' contention that "the 1997 loss arose from Idaho operations as the company was winding down it's[sic] affairs and probably should have been reported in 1996. We would like you to reconsider the deficiency as this was primarily an Idaho loss."

Although the petitioners disagreed with the audit adjustment, in order to bring this matter to a close, the petitioners submitted an additional payment of \$2,003. Thus, the total amount remitted by the petitioners is \$2,427, which equals the tax due on tax year 1996 as shown on the Notice of Deficiency Determination. Basically, the petitioners are seeking to have Idaho Code Section 63-3038 tax on the tax years 1991 through 1995 abated as well as all of the interest and penalty assessed on the tax years 1991 through 1996. Rather than accept the petitioners' offer, the auditor forwarded the file to Legal/Tax Policy for resolution.

With respect to the tax years 1991 through 1995, the auditor, based upon partnership information, determined that the petitioners had an Idaho filing requirement in each of these years. Idaho Code Section 63-3082 states that, "Every person required to file an income tax return shall pay a tax of ten dollars (\$10.00)." The petitioners have not provided any information

to dispute the auditor's finding that the petitioners had a filing requirement for the tax years 1991 through 1995. A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Comm'n, 110 Idaho 572 (Ct. App. 1986). Therefore, having presented no information disputing the auditor's finding, the petitioners have failed to meet their burden of proving error on the part of the deficiency determination. Albertsons, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The Tax Commission next turns its attention to the deduction in 1996 of a 1997 net operating loss carryback from the petitioners' investment in the partnership. Idaho Code Section 63-3026A governs the determination of the petitioners' Idaho taxable income. Additionally, Idaho Administrative Income Tax Rule 263 (Rule 263) provides guidance on the treatment of the petitioners' 1997 distributed share of partnership income. Idaho Code Section 63-3226A states in pertinent part:

**63-3026A. Computing Idaho taxable income . . . nonresident individuals. . .** (1) For nonresident individuals, . . . the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

. . .

(3) For the purposes of subsections (1) . . . of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

. . . (Underlining emphasis added)

Rule 263.01 states:

**263. DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (Rule 263). Section 63-3026A(3), Idaho Code.**

01. In General. The taxable amount of . . . a partner's distributive share of business income, gains, losses, and other pass-through items from . . . [a] partnership operating both within and without Idaho is determined by multiplying

each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (Underlining emphasis added)

Accordingly, the petitioners' Idaho share of the partnership's 1997 ordinary loss is determined by multiplying the petitioners' 1997 distributive share of ordinary loss by the partnership's 1997 Idaho apportionment factor. Although the petitioners have documented what their share of the partnership's 1997 ordinary loss is, no documentation has been provided to identify the partnership's 1997 Idaho apportionment factor. Thus, a critical component of the calculation is unknown. If a material fact upon which a deduction depends is not proved, the taxpayer, upon whom the burden rests, must bear his or her misfortune. Burnet v. Houston, 283 U.S. 223 (1931). Having presented insufficient evidence in support of their argument, the petitioners have failed to meet their burden of proving error on the part of the deficiency determination. Albertsons, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984). Therefore the Tax Commission must uphold the disallowance of the 1997 Idaho net operating loss carryback claimed on the petitioners' 1996 Idaho income tax return.

Finally, the petitioners ask that penalties and interest be abated. The Notice of Deficiency Determination includes an addition for penalty in accordance with Idaho Code Section 63-3046(c) and (f) which state, in pertinent part,

(c) In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

(f) If the penalty to be added to the tax by subsections (a), (b), (c), (d) or (e) hereof is less than ten dollars (\$10.00), the penalty to be added to the tax shall be a minimum of ten dollars (\$10.00).

Since the petitioners did not file their 1991 through 1996 Idaho income tax returns, the auditor properly imposed penalty as provided by Idaho law.

With respect to the petitioners' request that the interest be abated, in Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), the Idaho Supreme Court addressed the assessment of interest. In this case there was a substantial delay in resolving the taxpayer's liability. In addressing whether the taxpayer was required to pay interest, the Court stated:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute.

Interest imposed under Idaho Code § 63-3045 is a mandatory charge. The interest charged in the Notice of Deficiency Determination must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated August 27, 1999, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (calculated through May 15, 2001):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1991	\$ 10	\$ 10	\$ 8	\$ 28
1992	10	10	7	27
1993	10	10	5	25
1994	10	10	5	25
1994	10	10	4	24
1996	2,427	607	557	3,591
Payment received				<u>(2,427)</u>
			TOTAL DUE	<u>\$ 1,293</u>

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

An explanation of the petitioners' rights to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2001.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2001, 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. [Redacted]

[REDACTED]

[REDACTED]

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ADMINISTRATIVE ASSISTANT 1