

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15171
[REDACTED],)	
)	DECISION
Petitioner.)	
)	
)	

On September 7, 2000, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioner), proposing additional income tax and interest for the taxable year ending May 31, 1998, in the total amount of \$1,909. The petitioner filed a timely protest and petition for redetermination. The petitioner did not request a hearing or submit additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

The only issue before the Tax Commission is the auditor’s disallowance of a portion of a net operating loss carryforward.

On September 27, 1996, the petitioner, through a wholly owned subsidiary, acquired [Redacted] (hereafter “Newsub”). Newsub transacts business in Idaho. For tax years subsequent to September 27, 1996, Newsub was included in the petitioner’s combined Idaho income tax return. For years prior to September 28, 1996, Newsub was part of a unitary group of corporations (unrelated to the petitioner) that filed an Idaho combined income tax return.

On Newsub’s Idaho return for tax year ending September 27, 1996, Newsub reported a current year Idaho net operating loss of \$1,064,323 and an Idaho net operating loss carryforward from tax year ending April 28, 1995, of \$868,111. Therefore, the total amount of loss at the time of acquisition was \$1,932,434. Although the loss amount is not in dispute, the manner in which the net operating loss is to be applied is in dispute.

Newsb carried the \$1,932,434 loss forward and applied the loss against its apportioned share of income for tax years ending May 31, 1997 and May 31, 1998. Since Newsb had not elected to forego the three-year carryback period for the tax year ending September 27, 1996, the auditor disallowed \$20,626 of the net operating loss carryforward claimed on the tax year ending May 31, 1998. The auditor carried the \$20,626 loss back to the tax year ending April 29, 1994, and offset the remaining \$20,626 of income. In the Notice of Deficiency Determination, the auditor informed the petitioner that the refund due to the carryback of the \$20,626 of loss to the tax year ending April 29, 1994, was not allowed since the statute of limitations for claiming a refund had expired. The following table reflects how the petitioner and the auditor applied the April 28, 1995 and September 27, 1996 Idaho net operating loss:

Tax Year Ending	Per Petitioner		Per Auditor	
	Apr-95	Sep-96	Apr-95	Sep-96
Current Year Net Operating Loss	(\$1,047,756)	(\$1,064,323)	(\$1,047,756)	(\$1,064,323)
Amount Applied to 04/94	100,000	-	100,000	20,626
Amount Applied to 04/96	79,645	693,141	79,645	693,141
Amount Applied to 05/97	868,111	371,182	868,111	350,556
Amount Available	\$0	\$0	\$0	\$0

For 1996, Idaho Code Section 63-3021 states, in pertinent part,

63-3021. Net operating loss. (a) The term "net operating loss" means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero.

(b) Add the following amounts:

(1) The amount of any net operating loss deduction included in Idaho taxable income.

(2) In the case of a taxpayer other than a corporation:

(i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and

(ii) Any deduction for long-term capital gains provided by this chapter.

....

For 1996, Idaho Code Section 63-3022(d)(1) states, in pertinent part,

(d) (1) A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the three (3) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the three (3) preceding years may be subtracted in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. . . . At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made

The petitioner is not protesting the auditor's finding that the election required under Idaho Code Section 63-3022(d)(1) to forego the carryback period was not made. Instead, the petitioner states that "the election to forego the carry back of the September 1996 loss was superfluous because there was no remaining ability to carry back the Idaho net operating loss against Idaho income due to the \$100,000 limitation."¹ As support for its position, the petitioner is interpreting Idaho Income Tax Administrative Rule 35.01.01.201 (Rule 201) as follows:

According to Idaho Regulation, Rule 35.01.01.201, "The term net operation loss deduction means the **sum** of the Idaho **net operating losses** carried to another taxable year and subtracted in computing Idaho taxable income". Further, "The **net operating loss** carry back allowed for the entire carry back period shall not exceed one hundred thousand dollars (\$100,000) per taxpayer."

The loss experienced by [Newsub] for the fiscal year ended April 1995 fully offset income during each carry back period, in which there was income, to the extent allowed per period by Idaho law (\$100,000). Losses in excess of the income generated in those years were carried forward to offset income generated in future years. Your computation reflects a carry back from September of 1996 to April 1995 that would be in excess of the carry back allowed in April 1995 as defined by the above regulation."

Rule 201, which currently reads, in pertinent part, as follows:

¹ Newsub's Idaho taxable income for tax years ending in April of 1992 and April of 1993 had already been completely offset by Idaho net operating loss carryforwards.

**201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS
(Rule 201).**

Section 63-3022(c), Idaho Code.

01. Definitions For Purposes Of Net Operating Loss Carrybacks And Carryovers.

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income.

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code.

02. Adjustments To Net Operating Losses.

a. Adjustments to a net operating loss shall be determined pursuant to the law applicable to the loss year.

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations.

03. Adjustments In Carryback And Carryover Years.

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year shall be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years.

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year.

c. Adjustments may be made even though the year is closed due to the statute of limitations.

04. Net Operating Loss Carrybacks.

a. The net operating loss carryback allowed for the entire carryback period shall not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000).

.....

After reviewing Idaho Code Section 63-3021, Section 63-3022, and Rule 201, the Tax Commission disagrees with the petitioner’s interpretation. Idaho Code Section 63-3021 defines the term “net operating loss” as “the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero.” Idaho Code Section 63-3022(d) (1) stated that “A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the three (3) immediately preceding taxable years.” Thus, Idaho Code Section 63-3022(d)(1) simply limits the amount of a taxpayer’s Idaho Code Section 63-3021 “net operating loss” that can be carried back and utilized during the carryback period. The “net operating loss deduction”, as defined in Rule 210, is the “sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income.” To illustrate, the Tax Commission offers the following example:

If Corporation A, incorporated on January 1, 1993, had the following Idaho taxable income or loss (for purposes of this example Corporation A’s current year expenses exactly equal its current year income for tax years 1993 and 1994):

Tax Year Ending	1993	1994	1995	1996	1997	1998
Current Year Net Operating Loss	\$0	\$0	\$300,000	(\$150,000)	(\$250,000)	(\$350,000)
1996 Carryback to 1995			(100,000)	100,000		
1997 Carryback to 1995			(100,000)		100,000	
1998 Carryback to 1995			(100,000)			100,000
Carryforward to 1999	\$0	\$0	\$0	(\$50,000)	(\$150,000)	(\$250,000)

In this example, the “net operating loss” referred to in Idaho Code Section 63-3021, is \$150,000 for 1996, \$250,000 for 1997, and \$350,000 for 1998. The “net operating loss carryback” referred to in Idaho Code Section 63-3022(d)(1) from tax year 1996 is \$100,000,

from 1997 is \$100,000, and from 1998 is \$100,000.² The “net operating loss deduction”, as defined in Rule 201, that is subtracted in computing Corporation A’s 1995 Idaho taxable income is \$300,000.³

For the case at hand, the “net operating loss deduction” in arriving at Newsub’s Idaho taxable income for tax year April 29, 1994 is \$120,626. The \$126,626 loss is comprised of a \$100,000 “net operating loss carryback” from tax year April 28, 1995, and a \$100,000 “net operating loss carryback” from tax year September 27, 1996 of which only \$20,626 of the September 27, 1996, loss carryback is applied against income in the carryback period. Since, Newsub did not make the election to forgo the Idaho net operating loss carryback period, \$20,626 of the September 27, 1996, Idaho net operating loss must be carried back and applied against the remaining \$20,626 of Idaho taxable income generated in tax year April 29, 1994. Neither the petitioner nor Newco is entitled to receive a refund since the statute of limitations for claiming a refund due to the carryback of the \$20,626 Idaho net operating loss from tax year September 27, 1996, has expired.

WHEREFORE, the Notice of Deficiency Determination dated September 7, 2000, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER the petitioner to pay the following tax, penalty, and interest (calculated through August 31, 2001):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
May 31, 1998	\$1,650	\$0	\$375	\$2,025

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

² The “carryback period” for the 1996 “net operating loss carryback” is tax years 1993, 1994, and 1995. The “carryback period” for the 1997 “net operating loss carryback” is tax years 1994, 1995, and 1996. The “carryback period” for the 1998 “net operating loss carryback” is tax years 1995, 1996, and 1997.

³ \$100,000 from 1996 plus \$100,000 from 1997 plus \$100,000 from 1998.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

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]

ADMINISTRATIVE ASSISTANT 1