

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
[REDACTED],) DOCKET NO. 15189
)
) DECISION
Petitioner.)
_____)

On October 25, 2000, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (the petitioner), proposing additional income tax and interest for the taxable years 1998 and 1999, in the total amount of \$414. The petitioner filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

The issue before the Tax Commission is the application of Idaho Code Section 63-3022(j), as that statute read in 1998 and 1999, to the petitioner’s capital loss carry forward.

Facts

The petitioner moved to Idaho in 1998 and became an Idaho resident. Prior to moving to Idaho the petitioner was an Ohio resident. In 1997, the petitioner sold 1.75 acres of unimproved Ohio real property (hereafter “land”) incurring a capital loss in the amount of \$9,627. The petitioner had always held the land as an investment and the land was not used to generate income during the time period it was held by the petitioner. The petitioner is a physician and the land was not associated with his occupation as a physician.

The petitioner claimed a capital loss carryforward deduction in computing his federal and Idaho taxable income for 1998 and 1999. Upon audit, the Tax Commission audit staff, citing Idaho Income Tax Administrative Rule 105.03.b as authority, required the petitioner to addback, in arriving at the petitioner’s Idaho taxable income, the amount of the capital loss carryforward

deduction included in federal taxable income. The petitioner disagrees with the auditor's adjustment and interpretation of Rule 105.03.b. The petitioner maintains that Rule 105.03.b, and the related statute, only deal with capital losses "incurred in business activities." Therefore, according to the petitioner, Rule 105.03.b and the related statute are inapplicable to his situation since he did not incur the loss as part of any business activity.

Law and analysis

The addback of capital loss carryforwards in arriving at Idaho taxable income for taxable years 1998 and 1999 is governed by Idaho Code Section 63-3022(j). That section states "[i]n the case of persons, other than corporations, add any capital loss deducted which was incurred in business activities not taxable by Idaho at the time such loss was incurred." (Emphasis added). Rule 105.03.b, as it read in 1998 and 1999, states "An individual shall add a capital loss deducted in computing taxable income if the capital loss was incurred in a business activity not taxable by Idaho at the time it was incurred." (Emphasis added). Since it is undisputed that the capital loss was incurred prior to the petitioner's becoming subject to Idaho taxation, the issue before the Tax Commission is whether or not the petitioner's capital loss was incurred in a "business activity."

The Idaho statute and the Idaho income tax rules are silent on the meaning of the phrase "incurred in business activities." The Idaho Supreme Court has ruled that when the word "business" is used in a statute, its meaning depends upon the context or upon the purpose of the legislature. *Kopp v. Baird*, 79 Idaho 152, 160 (1957); *City of Lewiston v. Mathewson*, 78 Idaho 347, 352, (1956). The Tax Commission did not find the phrase "incurred in business activities" mentioned in any of the legislative history available for review. However, the Statement of Purpose and Intent (RS0461) for House Bill 153 (1973) states:

The proposed amendment will provide that net operating losses and capital losses which have been incurred in other states by taxpayers who have subsequently moved to Idaho may not be carried over as deductions from Idaho income. Administratively, the Tax Commission is following this procedure at the present time and has done so for several years but we feel that this policy should be made clear in the law. Taxpayers frequently attempt to use such losses from other states to reduce or eliminate income taxes which would otherwise be payable to Idaho.

Similar language was found in the minutes for the Senate Local Government and Taxation Committee dated February 19, 1973.

It would appear from legislative history that the audit staff is correct. However, it is a basic rule of statutory construction that, unless the result is palpably absurd, we must assume that the legislature means what is clearly stated in the statute. *Sherwood v. Carter*, 119 Idaho 246 (1991). Idaho Code Section 63-3022(j) clearly states that the capital loss being added back is a capital loss, which was “incurred in business activities.”

Words and phrases of a statute are normally given their usual, plain and ordinary meaning, according to the approved usage and language. *Kopp*, 79 Idaho at 160 (1957), *citing Karnuth v. United States*, 279 U.S. 231 (1929). In *Kopp*, the Idaho Supreme Court was faced with former Idaho Code Section 63-3013(b), subd. 7, which exempts from taxation “[i]ncome of resident persons and domestic corporations of the state of Idaho . . . from the conducting and carrying on of their . . . trades or businesses, when derived from sources outside of the state of Idaho.” *Id* at 322. (Emphasis added). The taxpayers in *Kopp* received royalties from their investment in oil properties located in Wyoming. The Court in *Kopp* looked to determine whether or not the “mere ownership of said real property in the State of Wyoming constituted engaging in a trade or business. . . .” *Id.* at 159. (Emphasis added). The Court held that the language used in the phrase “trade or business” was disjunctive and that both terms were to be given their natural meaning, and are not used synonymously. The Court discussed the term

business from a “natural meaning” as well as in the “commercial sense.” The Court provides the following analysis:

“Trade” commonly connotes the buying, selling, or exchanging of commodities. “Business,” however, is a much broader term . . . to signify “that which busies or engages time, attention, or labor as a principal serious concern or interest.” Webster's Dictionary. In this sense it embraces everything about which one can be employed.

“Business” in the commercial sense refers to “any activity which occupies the time, labor and attention of men for the purpose of a livelihood or profit.” *City and County of Denver v. Gushurst*, Colo.1949, 210 P.2d 616, 618. It implies some constant and connected employment. *Board of Supervisors of Amherst County v. Boaz*, 1940, 176 Va. 126, 10 S.E.2d 498. See also *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149; (remaining citations omitted)

The Court in *Kopp* found that the term “business” as used in the text of the statute “implies activities engaged in with a direct profit motive, in occupational and commercial aspects.” *Kopp*, 79 Idaho at 160; *See also, City of Lewiston v. Mathewson*, 78 Idaho 347, 352 (1956). After reviewing a variety of federal court cases dealing with similar phrases as used in various federal income tax statutes, the Court in *Kopp* held that the taxpayers did not receive the royalties from investments in Wyoming oil properties through the taxpayers’ conducting of a trade or business.

The United States Supreme Court has ruled that the use of the term “business” in a statute is based upon “the facts and circumstances in each case” and the focus on the use of the term “business” should be from a “common-sense concept of what is a . . . business.”

Commissioner v. Groetzinger, 480 U.S. 23, 35 (1987). The Court in *Groetzinger* stated:

Of course, not every income-producing and profit-making endeavor constitutes a trade or business. The income tax law, almost from the beginning, has distinguished between a business or trade, on the one hand, and "transactions entered into for profit but not connected with . . . business or trade," on the other. See Revenue Act of 1916, § 5(a), Fifth, 39 Stat. 759. Congress "distinguished the broad range of income or profit producing activities from those satisfying the

narrow category of trade or business." *Whipple v. Commissioner*, 373 U.S., at 197, 83 S.Ct., at 1171. We accept the fact that to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and that the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity, a hobby, or an amusement diversion does not qualify.

Id at 35.

Finding

Idaho Code Section 63-3022(j) clearly states that the capital loss being added back is a capital loss "incurred in business activities." The basic rules of statutory construction require that the Tax Commission follow the language of the statute as written. Therefore, the Tax Commission finds the phrase "incurred in business activities" as used in the text of Idaho Code Section 63-3022(j) implies activities engaged in with a direct profit motive, in occupational and commercial aspects. It is not entirely clear why the Idaho Legislature included the phrase "incurred in business activities" in Idaho Code Section 63-3022(j). Nonetheless, limiting the statute's reach to capital losses incurred in business activities, as opposed to a transaction entered into for profit regardless of any connection to a business or trade, is not a "palpably absurd" result. Therefore, when applying the Supreme Court's guidance in *Groetzing* to the facts and circumstances in the case before the Tax Commission, the Tax Commission finds that the property sold by the petitioner was a transaction that the petitioner entered into for profit but was not connected with a trade or business of the petitioner. Since the capital loss was not connected with a trade or business of the petitioner, Idaho Code Section 63-3022(j), as it read in 1998 and 1999, does not require that the petitioner's capital loss be added back in determining Idaho taxable income.

WHEREFORE, the Notice of Deficiency Determination dated October 25, 2000, is hereby CANCELLED.

An explanation of the petitioner's rights 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]
[REDACTED]

Receipt No. [Redacted]

ADMINISTRATIVE ASSISTANT 1