

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16195
[REDACTED])	
Petitioner.)	DECISION
)	
)	
)	

On October 12, 2001, the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional income tax, penalty, and interest for tax years ending 12/31/97, 12/31/98, and 12/31/99 in the total amount of \$198,815.

On December 12, 2001, a timely protest and petition for redetermination was filed by the taxpayer. An informal conference was requested by the taxpayer and held on June 13, 2002.

The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the Notice of Deficiency Determination. The issue for decision is whether, in applying Internal Revenue Code (IRC) §§ 381 and 382 to adjust the carryover of net operating losses (NOLs) following a merger, the apportionment factor of the merged company is (a) the factor for the last (short) taxable period of the company’s existence, for which a final return was filed, or (b) the factor for the last twelve months of the company’s existence. The Tax Commission holds that alternative (a) is correct.

Facts

The taxpayer is the parent company of a unitary group of affiliated corporations that files a consolidated return for federal income tax purposes using the calendar year for its accounting period. A member (the “merged company”) of the taxpayer’s federal consolidated group was merged into another member on May 2, 1997. The merged company filed a short period return within the taxpayer’s 1997 consolidated return; the short period covered January 1 through May 2 of 1997.

The merged company had incurred net operating losses (NOLs) during its existence. The merged company's Idaho apportionment factor for the short period ended May 2, 1997 was .00077%. For the twelve months preceding May 2, 1997, the merged company's Idaho apportionment factor was a higher number, according to the taxpayer.

The Tax Commission's auditors added back the NOL carryover to 2000 that was claimed on the return. Applying Rule 200.02, which incorporates Internal Revenue Code (IRC) §§ 381 and 382 by reference, the auditors applied the apportionment factor of .00077% to the federal NOL carryover of the merged company as of May 2, 1997, and allowed the reduced amount to be absorbed in the following years.

The taxpayer argues that the reference to "taxable year" in Rule 200.02 requires the use of a 12-month look-back period instead of any short period for which a return may have been filed.

Law and analysis

Idaho Code § 63-3002 states the intention of the Legislature (emphasis added):

by the adoption of [the Idaho Income Tax] Act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income . . . , *accounting methods*, taxation of . . . corporations, . . . and other pertinent provisions to gross income as defined therein,

Section 63-3010 defines "taxable year" as:

- (1) The taxable year of such taxpayer required pursuant to the Internal Revenue Code; or
- (2) Such other period as may be required by law; or
- (3) The calendar year.

Idaho income tax law thus incorporates the Internal Revenue Code provisions as to taxable years unless Idaho law requires a different result.

It is well settled in federal income tax law that a taxable year may be shorter than 12 calendar months. A short period generally results if a taxpayer changes its annual accounting period or is not in existence during a full 12-month taxable year. IRC § 443(a). If a corporation becomes a member of an affiliated group of corporations filing a consolidated return, a short-period return must be filed for the period ending on the day before the corporation joins the affiliated group Treas. Reg. § 1.1502-76(b)(1)(i). In addition, short-period years are created when corporations are acquired in certain tax-free reorganizations, liquidation transactions, or stock purchases treated as asset sales under IRC § 338. IRC § 381(b)(1).

In the context of a short taxable year, the term “taxable year” means “the period for which the return is made, if a return is made for a period of less than 12 months.” IRC § 441(b)(3). This rule is important with respect to carryover periods as the short year is treated as reducing the carryover period by a full year. Treas. Reg. § 1.172-4(a)(2). See generally BNA

Portfolio 574-1ST.

Accordingly, the period from January 1 through May 2, 1997 is a taxable year for federal income tax purposes, and as such is the year for which the apportionment factor is applied to reduce the NOL carryover of the merged company. The auditors’ adjustment is correct.

The auditors also applied a penalty for substantial understatement of tax. The taxpayer has not protested this penalty, and has not cited substantial authority for its position. The penalty is affirmed.

Conclusion

WHEREFORE, the Notice of Deficiency Determination dated October 12, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (computed through 12/06/02)(interest runs at \$29.68 per day):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/97	\$ 7,411	\$ 0	\$ 2,608	\$ 10,019
12/31/98	23,804	2,380	6,542	32,726
12/31/99	123,544	12,354	24,959	160,857
			TOTAL DUE	<u>\$203,602</u>

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

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

DATED this _____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, 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]