

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16426
[Redacted])	
Petitioners.)	DECISION
)	
)	

On February 14, 2002, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioners), proposing additional income tax and interest for the taxable years 1995, 1996, 1997, and 1999 in the total amount of \$2,238. The petitioners filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

The sole issue to be decided is the proper application of the petitioners' 1998 Idaho net operating loss. The petitioners carried the 1998 Idaho net operating loss forward to taxable year 1999 and claimed the loss as a deduction in arriving at their Idaho taxable income for 1999. The Tax Commission's Income Tax Audit Bureau (ITA) disallowed the deduction in 1999 and carried the petitioners' 1998 Idaho net operating loss back to taxable years 1995, 1996, and 1997. ITA, in the explanation page attached to the audit report, informed the petitioners that since the petitioners had failed to elect to forego the Idaho carryback period in accordance with the Idaho statute, the 1998 loss was required to be carried back and applied to prior taxable years before the 1998 loss could be carried forward to taxable year 1999. ITA applied the 1998 loss as follows:

1998 Idaho Net Operating Loss	\$(46,969)
Amount absorbed in 1995	20,346
Amount absorbed in 1996	2,615
Amount absorbed in 1997	<u>24,008</u>
Amount available as a carry forward to 1999	<u>\$ -0-</u>

Law and Analysis

The starting point for computing Idaho taxable income is federal taxable income as defined in the Internal Revenue Code. Idaho Code section 63-3002.¹ In computing Idaho taxable income, any federal net operating loss is added to federal taxable income. Idaho Code section 63-3022(b). Any Idaho net operating loss is then subtracted. Idaho Code section 63-3022(c).

Idaho Code section 63-3022(c)(1) stated, in pertinent part:

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.

In the petitioners' petition for redetermination dated March 12, 2002, the petitioners claim that:

If you review the copy of our 1998 1040 Individual Tax Return that was attached to our state return on the back page, it states that we wish to relinquish the entire carry back period with respect to the net operating loss incurred for the tax year ended December 31, 1998. Pursuant to the IRS Code 172(B)(3). This was how we wanted our taxes filed then and how we still want them filed now.

¹ Unless otherwise indicated, references to Idaho Code sections refer to the Idaho Code section in effect for taxable year 1998.

The election that the petitioners maintain was included with the federal return attached to the Idaho return states:

[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]		[Redacted]
[Redacted]		

Basically, the petitioners argue that their election to forego the federal carryback period included with the federal return that was attached to the Idaho return satisfies the requirements under Idaho law to forego the Idaho carryback period because the federal election refers to IRC section 173(b)(3), the same federal section mentioned in Idaho Code section 63-3022(c). The Tax Commission respectfully disagrees. Idaho Code [Redacted]63-3022(c)(1) states that “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.” (Emphasis added.) Idaho Income Tax Administrative Rule 201 (hereafter “Rule 201”) sets forth the “manner” in which the Idaho election was to have been made for taxable year 1998.

At the time the petitioners filed their Idaho income tax return on April 14, 1999, Rule 201.d stated:

d. Timing and Method of Electing to Forego Carryback. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. The election referred to in this subsection is made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information:

- i. The name, address, and taxpayer's social security number or employer identification number;
- ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(d)(1), Idaho Code, to forego the carryback provision; and

iii. The amount of the net operating loss.

Later during taxable year 1999 as a result of legislation deleting former Idaho Code section 63-3022(a), Rule 201 was amended to reflect the renumbering of the remaining Idaho Code section 63-3022 subsections.² After being amended, Rule 201 stated:

d. Timing and Method of Electing to Forego Carryback. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this subsection shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information:

- i. The name, address, and taxpayer's social security number or employer identification number;
- ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and
- iii. The amount of the net operating loss.

Clearly, the election that the petitioners made to forego the federal carryback period did not comply with all of the requirements found in Rule 201.

Idaho Code section 63-3022 provides the Tax Commission the authority to prescribe rules governing the manner in which the election is made. In 2000, the Tax Commission proposed changes to Rule 201 changing the manner in which the election was to be made to include the federal election in certain circumstances. However, Rule 201 (as it currently reads) makes it clear that the acceptance of the federal election only applies to net operating losses incurred in taxable years beginning on or after January 1, 2001. Since the Idaho net operating loss at issue is for taxable year 1998, the changes made to Rule 201 are not applicable to the case currently before the Tax Commission.

² 1998 Idaho Session Laws, Volume 1, Chapter 42 (H. B. No. 541), Section 2, Page 175.

In addition to the disallowance of the petitioners' deduction of the 1998 net operating loss in taxable year 1999, ITA recalculated the amount of Idaho investment tax credit available as a carryforward to petitioners' 2001 Idaho income tax return. According to ITA, the Idaho investment tax credit available as a carryforward to taxable year 2001 is \$21,393 [Redacted]. Upon further review, it has been determined that the Idaho investment tax credit available as a carryforward to taxable year 2001 is \$21,771 [Redacted]. Therefore, the Notice of Deficiency Determination shall be modified accordingly.

Conclusion

Since the application of the statutory provision is mandatory and not discretionary, the Commission finds that the election filed by the petitioners does not fulfill the requirements under Idaho law to forego the Idaho net operating loss carryback provision of Idaho Code section[Redacted]63-3022.³

WHEREFORE, the Notice of Deficiency Determination dated February 14, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$ (4)	\$ 0	\$ (4)

³ See docket no. 15956 at http://www2.state.id.us/tax/decisions_indiv02.htm. See also, docket number 14436 (issued April 11, 2000) and docket number 14387 (issued November 27, 2000) both of which can be found at http://www.state.id.us/tax/decisions_indiv00.htm.

1996	0	0	0
1997	(139)	(49)	(188)
1999	2,094	427	2,521
TOTAL DUE			<u>\$2,329</u>

Interest is calculated through December 15, 2002, and will continue to accrue as set forth in Idaho Code section 63-3045.

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 _____, 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]

Receipt No. [Redacted]
