

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16551
[REDACTED])	
Petitioner.)	DECISION
)	
)	
)	

On March 13, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1997 through 1999 in the total amount of \$603,917.

On April 27, 2002, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

[Redacted] The Bureau reviewed the changes and determined the changes were applicable to the taxpayer's Idaho income tax returns. The Bureau adjusted the taxpayer's returns and sent the taxpayer a Notice of Deficiency Determination.

[Redacted] The Bureau acknowledged the taxpayer's protest and forwarded the matter for administrative review. The Tax Commission sent the taxpayer a letter giving them two options for having the Notice of Deficiency Determination redetermined. [Redacted]The taxpayer did not provide the documentation it stated it was going to provide. However, this case is one of three cases in which the taxpayers are inter-related, contest the same issue, and have the same arguments. Therefore, the Tax Commission assumed the documentation provided for one of the cases also applied to this case. The taxpayer claimed the documentation proved the Secretary of Treasury specifically abated the alleged deficiency pursuant to Title 26 USC Section

6213(b)(2)(A), and therefore, the claim of the Idaho State Tax Commission was based on erroneous information.

[Redacted] IRC section 6212(d) gives the Secretary the ability to rescind a notice of deficiency with the consent of the taxpayer. This is an action initiated by the Secretary, not by the taxpayer. If in fact the taxpayer gave its consent to the Secretary to rescind the notice of deficiency, it does not mean that the Secretary was required to do so. The record contains no evidence that the Secretary wanted to rescind the notice of deficiency or requested the consent of the taxpayer.

The taxpayer stated that it demanded abatement of the Secretary's assessment as provided for in IRC section 6213(b)(2)(A). However, this section of the IRC deals specifically with assessment notices arising from mathematical or clerical errors on taxpayers' returns. The subsection quoted refers to paragraph (1) in section 6213(b). That paragraph states that assessments made because of mathematical or clerical errors cannot be petitioned to the Tax Court. However, paragraph (2)(A) states that a taxpayer can ask the Secretary to abate the assessment for mathematical or clerical errors and the Secretary shall abate the assessment. After the abatement, any reassessment subsequent to the abatement must then follow the deficiency procedures.

Regardless of whether the taxpayer made the request for abatement, the taxpayer did not receive an assessment notice for mathematical or clerical errors. [Redacted] The Tax Commission finds that the adjustments the Bureau made were appropriate to bring the taxpayer's Idaho returns in to compliance with Idaho Code section 63-3002.

[Redacted]The adjustments reduced the taxpayer's net operating loss to zero. Since the taxpayer's net operating loss was fully absorbed or eliminated in an earlier year, there was no net

operating loss to carryover to 1999. Therefore, the Tax Commission upholds the Bureau's adjustment disallowing the net operating loss carryover reported on the taxpayer's 1999 Idaho income tax return.

WHEREFORE, the Notice of Deficiency Determination dated March 13, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$110,702	\$27,676	\$40,661	\$179,039
1998	289,840	72,460	84,082	446,382
1999	0	0	0	<u>0</u>
			TOTAL DUE	<u>\$625,421</u>

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

An explanation of the taxpayer's 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]

