

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16943
[REDACTED])	
)	DECISION
Petitioner.)	
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On August 9, 2002, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioner), proposing additional income tax and interest for the taxable year 1998 in the total amount of \$10,342. The petitioner filed a timely protest and petition for redetermination. A hearing was held on March 20, 2003. The Commission, having reviewed the file, hereby issues its decision.

The petitioner claimed a \$66,194 short-term capital loss and a \$113,184 long-term capital loss from the liquidation of [Redacted] Partnership. It is apparently the petitioner's position that these amounts represent his remaining outside basis in the aforementioned partnership. An auditor from the Commission's Income Tax Audit Bureau (ITA) requested that the petitioner provide the Commission with documentation to verify petitioner's outside basis. After reviewing the information submitted by petitioner, ITA allowed a \$55,000 capital loss and disallowed the remaining \$124,378 capital loss deduction.

As a result of the decrease in the amount of capital loss allowed as a deduction, the amount of petitioner's Idaho capital gains deduction increased by \$24,521. Additionally, as a result of the disallowance of the petitioner's capital loss deduction, the petitioner's federal adjusted gross income increased to a point where a portion of the petitioner's itemized deductions and personal exemptions are disallowed in accordance with federal law as follows:

Amount of itemized deductions disallowed	\$3,278
Amount of personal exemption disallowed	\$5,076

The disallowance of the itemized deductions and personal exemptions were not included as an adjustment in the Notice of Deficiency Determination; however, these adjustments are required in order to correctly calculate the petitioner's federal taxable income, which is the starting point for the calculation of petitioner's Idaho taxable income. See Idaho Code section 63-3002. During the March 20, 2003, informal hearing, the petitioner was informed of the Commission's intent to make these additional adjustments to the Commission's Notice of Deficiency Determination.

After the March 20, 2003, informal hearing, the Commission sent the petitioner a letter requesting that the petitioner provide the Commission with the calculation of his inside and outside basis in the partnership from the point in which he purchased his interest in the partnership to the date of liquidation of the partnership. As of the date of this decision, the requested information has not been received.

It is well established in Idaho law, as well as federal income tax law and the tax laws of other states, that a taxpayer claiming a deduction, exemption, or credit bears the burden of establishing entitlement to the same, both as to law and fact.¹ As to law, if there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer.² If a material fact upon which a deduction depends is not proved, the taxpayer, upon whom the burden rests, must bear his or her misfortune.³

¹ *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934); *see also Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984); *Bistline v. Bassett*, 47 Idaho 66, 272 P. 696 (1929).

² *Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 913 P.2d 1157, 1159 (1996), *citing Hecla Mining Co. v. Idaho Tax Comm'n*, 108 Idaho 147, 151, 697 P.2d 1161, 1165 (1985); *Housing Southwest v. Washington County*, 128 Idaho 335, 913 P.2d 68 (1996), *citing Owyhee Motorcycle Club, Inc. v. Ada County*, 123 Idaho 962, 964, 855 P.2d 47, 49 (1993).

³ *Burnet v. Houston*, 283 U.S. 223 (1931).

WHEREFORE, the Notice of Deficiency Determination dated August 9, 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 petitioner pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$8,875	\$2,866	\$11,741

Interest is calculated through November 10, 2003, and will continue to accrue at the rate 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 petitioner's rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, 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]