

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 17081
[Redacted]	)	
Petitioners.	)	DECISION
	)	
	)	

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[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated October 4, 2002, asserting additional income tax and interest totaling \$3,409 for tax period 1999.

In accordance with Idaho Code section 63-3045(2), a hearing was held on May 15, 2002. Commissioner [Redacted], Tax Policy Specialist, and [Redacted], Tax Policy Specialist, attended on behalf of the Commission. [Redacted], CPA, of [Redacted], attended on behalf of the petitioners. The Tax Commission, having reviewed the file, hereby issues its decision.

The auditor disallowed the \$35,463 net operating loss deduction claimed by the petitioners in arriving at their 1999 Idaho taxable income. It appears that the petitioners calculated their Idaho net operating loss carryforward deduction as follows:

Petitioners' 1998 federal adjusted gross income	(\$28,363)
Petitioners' 1998 standard deduction	<u>(7,100)</u>
Amount of loss carried forward and claimed in 1999 as a federal net operating loss carryforward and as an Idaho net operating loss carryforward	<u><u>(\$35,463)</u></u>

The starting point for computing the petitioners' 1998 Idaho taxable income is federal taxable income as defined in the Internal Revenue Code. Idaho Code section 63-3002.<sup>1</sup> In computing Idaho taxable income, any federal net operating loss is added to taxable income. Idaho Code section 63-3022(b). Idaho net operating loss carryforwards and carrybacks are then subtracted in calculating Idaho taxable income. Idaho Code section 63-3022(c). Thus the

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<sup>1</sup> Unless otherwise indicated, all references to Idaho statutes are to the Idaho statutes in effect for tax period 1998.

petitioners correctly added back the \$34,463 of federal net operating loss deducted in calculating “taxable income”; however, the auditor argues that the petitioners should not have subtracted the \$34,463 as an Idaho net operating loss carryforward.

The Idaho calculation of a net operating loss is different than the federal calculation. For example, Idaho’s calculation of an Idaho net operating loss carryforward would not include the standard deduction or itemized deductions. Idaho Code section 63-3021(b)(4). The auditor recalculated the petitioners’ 1998 Idaho net operating loss in accordance with Idaho Code section 63-3021 as follows:

Petitioners’ 1998 Idaho taxable income as reported	(\$44,199)
Addback standard deduction	7,100
Addback personal exemptions claimed	8,100
1998 Idaho net operating loss	<u><u>(\$28,999)</u></u>

The petitioners’ inclusion of the standard deduction overstated the amount of petitioners’ 1998 Idaho net operating loss available as a deduction by \$7,100. It does not appear that the petitioners dispute the auditor’s calculation of their 1998 Idaho net operating loss.

Upon discovering that the petitioners had failed to make an election to forego the carryback period, the auditor recalculated what the amount of the allowable net operating deduction would be in tax year 1999. Since the entire amount of the 1998 net operating loss would have been absorbed in three tax years prior to tax year 1998, the auditor determined that the petitioners did not have a net operating loss carryforward available as a deduction in 1999. Accordingly, the auditor denied the net operating loss deduction claimed on the petitioners’ 1999 Idaho income tax return. In the petition for redetermination dated December 5, 2002, the petitioners’ representative argues for allowance of the deduction in 1999, since: <sup>2</sup>

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<sup>2</sup> The petitioners’ representative also disputes the auditor’s verbal representations that the statute of limitations has expired on the ability to carry the 1998 Idaho net operating loss back to the three prior tax years and claim a refund.

The failure to file an election to forego the carryback period was a simple error that occurred on April 3, 1999, when, during the extreme stress of dealing with the April 15th deadline, we simply overlooked the election. Our intent was to carry forward the loss because after several years of running their own business at a loss both of the taxpayers were going to work where they would be receiving wages and having tax withheld. The relief from tax in future years, rather than recovery of prior tax was more cost effective for the taxpayers.

We believe that the filing of the 1999 tax return clearly showing the carryover was consistent with the intent to forego the carryback period.

Idaho Code section 63-3022 governs the application of the petitioners' 1998 Idaho net operating loss and it stated, in part:

(c) (1) 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. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. *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. . . .*

Emphasis added.

Idaho Income Tax Administrative Rule 201.(d) governs the manner in which the election is to be made and it states,

05. Timing And Method Of Electing To Forego Carryback.

a. Net operating losses incurred in taxable years beginning prior to January

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The representative argues that, as a result of the Commission's disallowance of the net operating loss carryforward deduction in tax year 1999, Idaho Code section 63-3072(f) reopens the prior tax years for the purpose of making a refund claim. The Commission did not agree with this interpretation of Idaho Code section 63-3072(f) by another taxpayer in its decision in docket number 14886. See <http://www2.state.id.us/tax/pdf/income/2000/0014886.pdf>. Since the Notice of Deficiency Determination currently before the Tax Commission *does not* contain a denial of a refund claim involving the three tax years prior to 1998, this particular argument raised by the petitioners' representative in the petition for redetermination will not be further addressed in this decision.

1, 2001. 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.

A careful review of the Idaho statute reveals that the carryback of the 1998 net operating loss was *mandatory* absent an election by the taxpayer to forego the carryback. In this case, the petitioners made no such election when they filed their 1998 Idaho income tax return. Instead, the petitioners simply carried the net operating loss forward to 1999. The Idaho statute required the 1998 net operating loss to be carried back to the prior three tax years before the net operating loss could be carried forward. As a result of having been carried back to the prior three tax years, the petitioners did not have an Idaho net operating loss carryforward available as a deduction in tax year 1999. Therefore, the Commission upholds the auditor's disallowance of the 1998 net operating loss carryforward deduction as a deduction in arriving at the petitioners' 1999 Idaho taxable income.

WHEREFORE, the Notice of Deficiency Determination dated October 4, 2002, is hereby 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>
1999	\$2,835	\$675	\$3,510

Interest is calculated through August 15, 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 petitioners' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

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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]

[Redacted]