BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of,	)	
	)	DOCKET NO.18441
[Redacted],	)	
	)	DECISION
Petitioners.	)	
	)	

On October 8, 2004, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax and interest for the taxable year 2001 in the total amount of $723.

On November 12, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2001 nonresident Idaho individual income tax return reporting flow-through income from an Idaho S-corporation. The flow-through income included a long-term capital gain on the sale of Idaho property on which the taxpayers claimed the Idaho capital gains deduction. The Income Tax Audit Bureau (Bureau) reviewed the taxpayers' return and determined that, since the taxpayers reported a net capital loss on their federal return, they were not entitled to the Idaho capital gains deduction. The Bureau corrected the taxpayers' return and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that the disallowance of the capital gains deduction illegally discriminates against nonresidents. The taxpayers stated that following the instructions to Idaho form 39NR and form CG limits their deduction to zero because of the capital loss reported on their federal return. They stated this is discriminatory against them as nonresidents. The taxpayers stated that Idaho residents get the benefit of offsetting capital gains with capital losses; therefore, the limit of the capital gains does not come into play in the calculation of the capital gains deduction. Nonresidents are forced to exclude non-Idaho-related capital losses in the calculation and to apply this rule is illegally discriminatory.

Idaho Code section 63-3022H stated, in pertinent part,

> (1) If an individual taxpayer reports a net capital gain in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.
> (2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in federal taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

As the taxpayers stated, their 2001 federal return reported a net capital loss. However, for Idaho income tax purposes, the only reportable capital item was income from the taxpayers' S-corporation. Idaho Code section 63-3022H states that, if an individual has reported in taxable income a net capital gain, 80% of the net capital gain from the sale of qualifying property shall be a deduction in determining taxable income. However, the taxpayers had a net capital loss used in determining taxable income. Therefore, the Idaho capital gains deduction is not available to them. Furthermore, the Idaho Code limits the amount of the capital gains deduction in subsection (2) of section 63-3022H to the amount of capital gain net income from ALL property included in federal taxable income. The taxpayers did not have capital gain net income. Therefore, according to Idaho Code section 63-3022H(2), the taxpayers' capital gains deduction is limited to zero.

The taxpayers argued that Idaho's law is discriminatory against nonresidents because Idaho does not allow non-Idaho losses to offset Idaho gains as it does for residents. In Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221,64 L.Ed. 445 (1920), the court discussed different treatment of residents and nonresidents.

> Appellant contends that there is a denial to noncitizens of the privileges and immunities to which they are entitled, and also a denial of the equal protection of the laws, in that the act permits residents to deduct from their gross income not only losses incurred within the state of [Redacted] but also those sustained outside of that state, while nonresidents may deduct only those incurred within the state. The difference, however, is only such as arises naturally from the extent of the jurisdiction of the state in the two classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination. As to residents it may, and does, exert its taxing power over their income from all sources, whether within or without the state, and it accords to them a corresponding privilege of deducting their losses, wherever these accrue. As to nonresidents, the jurisdiction extends only to their property owned within the state and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources. Hence there is no obligation to accord to them a deduction by reason of losses elsewhere incurred.

It appears to the Tax Commission that the same holds true in this case. For Idaho residents, Idaho exerts its taxing authority based upon their income from all sources, whether within or without the state. Consequently, residents have been granted the right to offset their losses against their income. Conversely for nonresidents, Idaho can only tax the nonresident on income from Idaho sources; therefore, only Idaho losses can offset Idaho income. The Tax Commission finds that the discrimination the taxpayers perceived is the result of the natural differences between Idaho's jurisdiction to tax residents and nonresidents.

The Tax Commission's primary function is to enforce the law as written. Any perceived inequity in the law is something that needs to be taken up by the Idaho legislature. In this case, the Tax Commission does not find any ambiguity in Idaho Code section 63-3022H and therefore must follow the law and must uphold the determination of the Bureau.

WHEREFORE, the Notice of Deficiency Determination dated October 8, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

YEAR	TAX	INTEREST	TOTAL
2001	$624	$114	$738

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

An explanation of the taxpayers' right to appeal this decision is included with this decision.

DATED this ____ day of ____________________, 2005.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of ___________________, 2005, 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]

Receipt No.

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