

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19107
[REDACTED])	
Petitioner.)	DECISION
)	
)	

On December 27, 2004, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioner), proposing additional income tax and interest for the taxable years 1999 and 2000 in the total amount of \$6,747. The petitioner filed a timely protest and petition for redetermination. A hearing was held on April 21, 2006. The Tax Commission, having reviewed the file, hereby issues its decision.

The two issues in this case are:

- 1) In arriving at Idaho apportionable income, should the petitioner have added back into income a federal deduction for dividends paid on certain preferred stock of public utilities?

- 2) Did the statute of limitations for filing a claim of refund for the carryback of a federal net capital loss incurred in tax year 2000 and adjusted by the Internal Revenue Service in 2004 expire?

With respect to the first issue, all parties are in agreement the Internal Revenue Code section 247 deduction for dividends paid on certain preferred stock of public utilities is not required to be added back when calculating Idaho apportionable income. No further analysis need be done on this issue; accordingly, the Commission will now turn its attention to the capital loss issue.

The petitioner timely filed its Idaho corporate income tax return for tax years 1997, 1998, and 1999. The time period for filing a refund claim under Idaho's normal three-year statute of limitations found in Idaho Code section 63-3072(b) for tax years 1997, 1998, and 1999 expired in 2001, 2002, and 2003, respectively.

On February 14, 2001, the petitioner filed with the Internal Revenue Service federal Form 1139--Corporation Application For Tentative Refund--which included a carryback of a 2000 net capital loss to tax years 1997, 1998, and 1999 as follows:

Net capital loss incurred in tax year 2000	(\$229,828,533)
Applied in tax year 1997	\$8,813,380
Applied in tax year 1998	\$68,318,410
Applied in tax year 1999	<u>\$152,696,743</u>
Amount available as a carryforward	<u><u>\$0</u></u>

The Internal Revenue Service processed Form 1139 in accordance with Internal Revenue Code section 6411 and remitted the requested refund to the petitioner in 2001. Although the petitioner filed Form 1139 with the Internal Revenue Service in February of 2001, the petitioner did not at the same time file an amended Idaho income tax return for tax years 1997, 1998, and 1999 to claim an Idaho refund for the capital loss incurred in tax year 2000. Under federal law, a taxpayer has 12 months from the end of the loss year in which to file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a capital loss carryback. Idaho does not have a similar provision. When Form 1139 was filed with the Internal Revenue Service, the timeframe in which to amend the Idaho tax return for 1997, 1998, and 1999 was still open.

In October of 2001, the petitioner filed its Idaho corporate income tax return for tax year 2000.

On June 25, 2004, the Internal Revenue Service issued its audit report on tax years 1999 and 2000. Tax years 1997 and 1998 had also been audited by the Internal Revenue Service and at the time of this decision were still in the federal appeals process. As part of the federal auditor's review of tax year 2000, the federal auditor adjusted the amount of the 2000 net capital loss and the corresponding impact on tax years 1997 through 1999 as follows:

	Per Form 1139	Per RAR	Adjustment
Net capital loss incurred in tax year 2000	(\$229,828,533)	(\$180,808,054)	(\$49,020,479)
Applied in tax year 1997	\$8,813,380	\$8,813,380	\$0
Applied in tax year 1998	\$68,318,410	\$63,309,326	\$5,009,084
Applied in tax year 1999	\$152,696,743	\$108,685,348	\$44,011,395
Total	\$0	\$0	\$0

The \$49,020,279 federal adjustment is further broken down as follows:

Partnership	Description	Adjustment Amount
[Redacted]	Long-Term Capital Gain from Partnership K-1's	(\$874,874)
[Redacted]	Sec. 731 Distribution in excess of basis	\$45,504,771
[Redacted]	Sec. 731 Distribution in excess of basis	\$4,449,455
[Redacted]	Sec. 1231 Gain or (loss)	(\$518)
[Redacted]	Sec. 1231 Gain or (loss)	(\$4,707)
[Redacted]	Sec. 1231 Gain or (loss)	(\$15,295)
[Redacted]	Sec. 1231 Gain or (loss)	(\$32,928)
[Redacted]	Sec. 1231 Gain or (loss)	(\$5,424)
Rounding		(\$1)
Total reduction in 2000 loss available for carryback		<u>\$49,020,479</u>

The majority of the reduction in the amount of net capital loss for 2000 was inclusion of capital gain income from the IRC sec. 731 distributions not previously reported. The remaining items were either adjustments to allow for losses not previously reported due to not having received the partnership K-1 prior to filing the tax return or to reverse the petitioner's estimation of capital gain from a partnership only to receive the actual K-1 reflecting no such gain.

On August 30, 2004, the federal auditor issued a revised audit report for the final issue outstanding that was incorporated into her review of tax years 1999 and 2000. The revised audit report addressed the 1999 amended return filed to claim the Research and Experimentation Credit.¹

On September 24, 2004, the petitioner timely submitted to the Commission, in accordance with Idaho Code section 63-3069, a copy of the August 30, 2004, “final federal determination.” On Federal Form 4549 titled “A Department of the Treasury–Internal Revenue Service Income Tax Examination Changes,” only tax years 1999 and 2000 were reflected; however, a number of the pages attached to Form 4549 reflected the impact of the federal auditor’s review of tax year 2000 on tax years 1997 and 1998. The petitioner points to the filing of this “final federal determination” and Idaho Code sections 63-3072(d), 63-3072(f), or both as support for its position that it is entitled to claim a refund for the amount of the net capital loss allowed in arriving at federal taxable income for 1997, 1998, and 1999.

On December 27, 2004, the Commission’s Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination picking up the net federal audit adjustments reflected on Federal Form 4549 titled “A Department of the Treasury – Internal Revenue Service Income Tax Examination Changes” for tax years 1999 and 2000. ITA reversed a couple of the federal adjustments as follows:

¹ Tax year 1999 still has a couple of federal audit issues outstanding; however, those issues were not incorporated as part of the federal audit submitted to the Commission for tax years 1999 and 2000.

	1999	2000
Taxable income as previously reported to Idaho	\$2,500,005,492	(\$3,145,131,609)
Adjustments per federal audit report	\$217,927,676	\$188,871,243
Commission audit adjustments:		
Add back federal net operating loss	(\$132,675,670)	
Add back federal capital loss	(\$44,011,395)	
Appportionable income as revised per NODD	\$2,541,246,103	(\$2,956,260,366)

Although not specifically stated in the NODD, ITA issued the NODD in accordance with Idaho Code section 63-3068(f), the Idaho statute that allows for the issuance of an additional deficiency assessment in the event of a “final federal determination.”

ITA’s adjustment for the federal NOL addback is not at issue as all parties agree with the treatment reflected in the NODD. Since the petitioner elected to forego the carryback period for Idaho, any tax impact for the reduction of the Idaho NOL for tax year 2000 will be taken into consideration in the subsequent Idaho audit cycle.

Since ITA is starting off with taxable income as previously reported to Idaho for tax year 1999, a starting figure that does not include any of the 2000 net capital loss carryback, ITA reversed the \$44,011,395 federal audit adjustment to the net capital loss. Accordingly, none of the net capital loss that was allowed as a deduction in 1999 by the Internal Revenue Service was allowed by ITA. The petitioner does not disagree with ITA’s adjustment to reverse out the \$44,011,395; however, the petitioner does take exception to not being allowed to deduct the \$108,685,348 amount that was allowed by the Internal Revenue Service for 1999. The petitioner argues that it is entitled to the \$108,685,348 under Idaho Code sections 63-3072(d), 63-3072(f), or both. The petitioner also argues that it is entitled to a deduction in 1997 and 1998 for the remaining amount allowed by the Internal Revenue Service.

Notifying the state of Idaho as a result of a change in the petitioner's federal liability is governed by Idaho Code section 63-3069 and Rule 890 which state in pertinent part:²

63-3069. Notice of adjustment of federal or state tax liability. -- (1) Upon final determination of any deficiency or refund of federal taxes written notice shall be immediately sent to the state tax commission by the taxpayer.

890. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (RULE 890). Section 63-3069, Idaho Code.

01. Final Determination. The term final determination as used in Section 63-3069, Idaho Code means final federal determination as defined in Section 63-3068(f), Idaho Code.

02. Written Notice.

a. Written notice shall include copies of all Revenue Agents' reports, and any other documents and schedules required to clarify the adjustments to taxable income. If the final determination results in a refund of state taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund.

b. Written notice included with an income tax return for a year or years other than the year subject to the federal adjustment shall not constitute the required notification.

The petitioner clearly notified the Commission within the required timeframe when submitting its "final federal determination" to the Commission; however, the petitioner did not submit an amended return for tax years 1997, 1998, or 1999 to claim a refund when the "final federal determination" was submitted to the Commission. If it is determined, under either Idaho Code section 63-3027(d) or 63-3027(f), that the net capital loss carryback deduction is allowable, the Commission must then determine if the petitioner is entitled to the net refund, given that the petitioner did not file an amended return to claim the refund as required by Rule 890.02.a.

² The language in Idaho Code section 63-3069(1) has been the same since this statute's inception in 1959. Subsection (2) was added later to include non-Idaho state determinations.

Filing a claim for refund is governed by Idaho Code section 63-3072 and Rule 880 which state in pertinent part

63-3072. Credits and refunds. -- (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) . . . a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. . . .

(c)

(d) Notwithstanding any other provisions of this section, when Idaho taxable income . . . for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (b) . . . only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e)

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount . . . capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to . . . capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section. . . .

880. CREDITS AND REFUNDS (RULE 880).
Section 63-3072, Idaho Code.

...

02. Timely Claim Required for Refund.

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period.

b. The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury.

c. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund.

03. Amended Returns As Refund Claims. A properly signed amended tax return shall constitute a claim for refund. The taxpayer must clearly set forth the amount claimed and explain why and how the original return is amended.

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07. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return . . . the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution.

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In April of 2005, Rule 880.02.b was deleted and 880.03 was reworded as follows:

03. Amended Returns Required as Refund Claims. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury.

Petitioner's basic argument is: since the August 30, 2004, federal audit report reflects an adjustment to the petitioner's net capital loss for tax year 2000 and includes schedules reflecting how the net capital loss carryback was applied by the Internal Revenue Service to tax years 1997 through 1999, that activity engaged in by the Internal Revenue Service in 2004 is sufficient under 63-3072(d) and/or 63-3072(f) to allow the petitioner to file a claim for refund for the full amount of the capital loss carryback deduction allowed by the Internal Revenue Service. The Commission disagrees. Although the petitioner's net capital loss was reduced by the Internal Revenue Service as part of the audit of tax year 2000 from \$229,828,533 to \$180,808,054, that adjustment does not override the petitioner's prior obligation under Idaho Code section 63-3072(b) to have timely filed a refund claim with Idaho for tax years 1997, 1998, and 1999, when the petitioner filed federal form 1139 to carry back its net capital loss incurred in tax year 2000. Accordingly, the Commission denies the petitioner's claim of refund for the carryback of the 2000 net capital loss deduction into tax year 1999.

Since the Commission has determined that Idaho Code sections 63-3072(d) and 63-3072(f) do not operate in such a fashion to now allow the refund claim for the tax year 2000 capital loss carryback to tax year 1999, the Commission need not address whether or not the failure to attach an amended return to a “final federal determination” submitted to the Commission as required by Rule 890.02(a) would also bar the refund the petitioner seeks.

Although the petitioner is barred by the statute of limitations from a refund claim for the carryback of the net capital loss for 2000 to tax year 1999, the petitioner, in accordance with Idaho Code section 63-3068(f), is subject to the additional assessment shown in the NODD as a result of the non-capital loss federal adjustments.

WHEREFORE, the Notice of Deficiency Determination dated December 27, 2004, is hereby 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>
1999	\$5,089	\$2,093	\$7,182
2000	-0-	-0-	-0-
		TOTAL DUE	\$7,182

Interest is calculated through July 31, 2006, 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 _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, 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.
