

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18468 & 18469
[REDACTED],)	
)	DECISION
Petitioners.)	
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On September 29, 2004, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued Notices of Deficiency Determination [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 2000 and 2001 in the total amounts of \$14,498 and \$14,498 respectively.

On November 24, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but did submit income tax returns for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) found that the taxpayers stopped filing Idaho individual income tax returns after tax year 1997. The Bureau sent the taxpayers a letter asking about their requirement to file income tax returns for the tax years 1998 through 2001. The taxpayers did not respond. The Bureau obtained information from the Internal Revenue Service and determined the taxpayers were required to file Idaho individual income tax returns. The Bureau prepared 1998 through 2001 returns for the taxpayers separately and sent them Notices of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that they had their original income tax returns. However, they apparently did not have the returns because it was two months later that the taxpayers provided returns for 1998 and 1999 and asked for an additional

90 days to provide their 2000 and 2001 returns. The Bureau accepted the taxpayers' 1998 and 1999 returns. The Bureau canceled the Notices of Deficiency Determination for those years and allowed the taxpayers additional time to provide their 2000 and 2001 returns.

More than a year passed and still the taxpayers had not provided their returns for 2000 and 2001. Therefore, the Bureau referred the matter for administrative review. The Tax Commission reviewed the matter and sent the taxpayers a letter giving them two options for having the Notices of Deficiency Determination redetermined. The taxpayers did not respond. The Tax Commission sent a follow-up letter to the taxpayers to which they replied that they would be sending additional statements, documents, or other material for consideration. The taxpayers stated the additional information would be submitted within the next 30 days.

Sixty days later, the Tax Commission received income tax returns for the taxpayers and their LLC for the years 2000 through 2005. The Tax Commission reviewed the taxpayers' 2000 and 2001 returns and found them to be a more accurate representation of the taxpayers' taxable income than the returns prepared by the Bureau. However, in its cursory review of the taxpayers' returns, the Tax Commission found that the taxpayers carried forward their 2000 net operating loss to their 2001 tax year. Attached to their 2000 return was the election to forego the carry back of the net operating loss and carry it forward to the succeeding years.

Idaho Code section 63-3022(c)(1) provides that at the election of the taxpayer the net operating loss carryback provision may be foregone and the loss subtracted from income in the next 20 succeeding taxable years. This section goes on to state that the election shall be made as under section 172(b)(3) of the Internal Revenue Code. Section 172(b)(3) states among other things that the election to forego the carryback, "shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss

for which the election is to be in effect." See also Idaho Administrative Rule IDAPA 35.01.01.201.05.

The Tax Commission received the taxpayers' 2000 return on December 22, 2006. The due date for the taxpayers' 2000 return was April 15, 2001. Since the taxpayers did not submit their 2000 return until well past the due date of the return, their election to forego the carryback provision of Idaho Code section 63-3022(c) was untimely. Therefore, the Tax Commission corrected the taxpayers' 2001 return to allow the appropriate net operating loss carryforward after the 2000 loss was carried back to the two preceding tax years, 1998 and 1999. The following table shows the absorption of the 2000 loss year.

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Income/(loss)	2,418	31,068	(41,013)	52,244
Carryback to 1998	(2,418)		2,418	
Carryback to 1999		(31,068)	31,068	
Carry forward to 2001			7,527	7,527
Adjusted Income/(loss)	0	0	0	44,717

On the taxpayers' 2000 return they crossed out the permanent building fund tax and wrote "NRF" or not required to file. They also did not claim the grocery credit because they were not required to file. However, since the taxpayers were members of an LLC and their prorata share of the LLC's gross income was greater than the filing threshold of Idaho Code section 63-3030, the taxpayers were required to file an Idaho income tax return. Therefore, the Tax Commission corrected the taxpayers' 2000 return to include the permanent building fund tax and the grocery credit.

The net result of the corrections made to the taxpayers' 2000 individual income tax return was a refund to the taxpayers. However, since the taxpayers did not file their 2000 return within the statutory provisions of Idaho Code section 63-3024A, the Tax Commission is barred from crediting or issuing the refund.

Wherefore, the Tax Commission accepts the taxpayers' returns for 2000 and 2001 in lieu of the returns prepared by the Bureau subject to the changes previously mentioned.

WHEREFORE, the Notices of Deficiency Determination dated September 29, 2004, are hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, are APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$ 0	\$ 0	\$ 0	\$ 0
2001	874	219	264	<u>1,357</u>
			TOTAL DUE	<u>\$1,357</u>

Interest is calculated to April 20, 2007.

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

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, 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.
