

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19724
[REDACTED])	
)	DECISION
Petitioners.)	
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated August 9, 2006, asserting additional liability for Idaho income tax and interest in the total amounts of \$18 and \$748 for 2002 and 2003, respectively.

The petitioners are nonresidents of Idaho. The petitioners claimed a net operating loss carried forward from 2001 on their 2002 and 2003 Idaho nonresident income tax returns. However, the petitioners had not filed a 2001 Idaho income tax return. Therefore, the staff of the Commission found that the petitioners had failed to carry their burden of proof that they were entitled to the net operating loss deduction and issued the Notice of Deficiency Determination referred to above.

In September 2006, the petitioners filed their protest to the Notice of Deficiency and filed their nonresident Idaho income tax return for 2001. The staff of the Commission adjusted the loss claimed by the petitioners. The petitioners had included a loss from an entity not transacting business in Idaho and had failed to include interest income earned by the petitioners from an Idaho partnership.

The petitioners disagree with the auditor’s determination and contend that the loss should be applied first to 2003. Idaho Code § 63-3022 as in effect in 2001 stated, in part:

- (c) (1) A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two
- (2) immediately preceding taxable years. Any portion of the net

operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) 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 two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) 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. The term "income" as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code. (Underlining added.)

The petitioners have the burden of proof regarding their entitlement to deductions. The Commission finds that the petitioners have failed to carry their burden to establish that they are entitled to a more beneficial treatment than was afforded to them by the auditor. Therefore, the Commission finds that the auditor's determination must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated August 9, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The petitioners have paid the amount of the asserted deficiency. Therefore, no demand is made at this time.

An explanation of the petitioner's 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]

Receipt No.
