

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19975
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (Petitioner) protests the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated January 12, 2007, asserting additional Idaho corporate income tax, penalty, and interest for the calendar years 2003, 2004, and 2005, inclusive.

The petitioner is a C corporation. From the information in the file, it appears that the petitioner was incorporated late in [Redacted] [Redacted]. The owners of the corporation during the years in question appear to have purchased the stock of the corporation sometime around [Redacted].

The only issue in this case is whether the petitioner is entitled to a deduction for a net operating loss carried forward from an unspecified previous taxable year. The representative for the petitioner suggests that the loss in question may have been incurred in [Redacted]. The representative also stated that, “[t]his is all that I can tell you, and all of the information that I have on this business.”

There are several unanswered questions regarding the claimed deduction. The Commission does not have a tax return for the petitioner showing that a loss was incurred or (if we accept arguendo that there was a loss) that it was properly computed. Also, without knowing the specific year of the net operating loss, we are unable to discern whether the statute of limitations for the carryforward had expired.

The representative for the petitioner stated that “there are no years of operation previous to the occurrence of this loss.” Since the corporation appears to have been in existence since [Redacted], this statement seems unlikely. The earliest Idaho income tax return in the record is for [Redacted]. The [Redacted] return shows that a net operating loss carryforward was claimed but does not reveal the year that the claimed loss was incurred.

Idaho Code § 63-3022 provided the authority for the application of net operating losses for all years in question. In [Redacted], Idaho Code § 63-3022 provided that the loss could be carried forward ten years but, at the election of the taxpayer, the loss (up to \$100,000) could be carried back to the three preceding years. The Commission does not know if there was a loss in [Redacted]. Further, if a loss was incurred, the Commission does not know if the petitioner elected to carry the loss back. In addition, the Commission does not know if the petitioner had income in those preceding years which would have absorbed any loss that may have been available. Even if a loss was incurred in [Redacted], the last year to which the loss could be carried forward was [Redacted]. Therefore, there is no possible set of facts that would allow the petitioner to carry a net operating loss from [Redacted] to the years in question.

For [Redacted], Idaho Code § 63-3022 provided that the first \$100,000 of a net operating loss was to be carried back to the two preceding years. If the net operating loss was not absorbed in the carryback years, the remaining portion of the net operating loss could be carried forward to the 20 subsequent years. Again, the Commission has unanswered questions. Did the petitioner incur a loss in [Redacted]? If so, was there sufficient income in the preceding two years to absorb any loss that may have been incurred? Nothing in the file sets out this information.

The taxpayer has the burden of proof with regard to both the law and the facts regarding deductions. The U. S. Supreme Court has stated:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

* * *

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 790 (1934).

Taxpayers have no inherent right to deductions; they are matters of legislative grace. Interstate Transit Lines v. Commissioner, 319 U.S. 590, 593 (1943). The taxpayer must be able to point to some particular statute to justify his deduction and establish that he comes within its terms. Deputy v. DuPont, 308 U.S. 488, 493 (1940); White v. United States, 305 U.S. 281 (1938). While there is provision in the Idaho law for the deduction of net operating losses carried forward, the petitioner has failed to demonstrate that it comes within the terms necessary to be entitled to the deductions sought. Accordingly, the Commission affirms the Notice of Deficiency Determination.

WHEREFORE, the Notice of Deficiency Determination dated January 12, 2007, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (computed to June 30, 2007):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$193	\$48	\$36	\$ 277
2004	211	53	27	291
2005	325	13	22	<u>360</u>
				928
			LESS PAYMENTS	<u>(120)</u>
			TOTAL DUE	<u>\$ 808</u>

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

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]

Receipt No.

[REDACTED]_____