

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21672
[Redacted])	
)	DECISION
Petitioners.)	
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On January 9, 2009, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination (NODD) to [Redacted] proposing additional income tax, penalty, and interest for taxable year 2006 in the total amount of \$9,600. For convenience, the Commission will refer to [Redacted] as petitioners, [Redacted] as husband, and [Redacted] as wife throughout this decision.

Based upon an audit of the petitioners’ 2006 Idaho resident income tax return, the ITA issued a NODD to the husband at his last known address and an NODD to the wife at her last known address. The petitioners filed a timely protest and petition for redetermination. The petitioners were informed of their appeal rights. Neither of the petitioners requested an Idaho Code section 63-3045(2) hearing. The Commission, having reviewed the file, hereby issues its decision.

The wife responded to the ITA’s NODD by hand delivering a letter to the Commission along with a divorce decree documenting that the petitioners were divorced in 2007. In her letter, she stated that the husband “shall pay all state and federal income taxes, interest and penalties, if any, for all years prior to January 1, 2008....”

On February 16, 2009, the ITA received an Idaho Power of Attorney identifying those individuals that would be representing the husband in this matter.

In a letter dated July 16, 2009, the accounting firm that originally prepared the petitioners' 2006 Idaho income tax return informed the Commission that it agreed with the ITA's recalculation of the Idaho net operating loss as shown in the NODD. The accounting firm stated:

We respectfully request that the penalty of \$781 be abated. The taxpayers relied on our office to calculate the Idaho Net Operating Loss Carryforward correctly, and the calculation on the return was incorrect. The taxpayers did not intentionally understate their taxable income for 2006. The error was made by our office and it is our hope that the taxpayers not be penalized for it.

The petitioners' Idaho net operating loss that was carried forward into 2006 originated in taxable year 2004 as follows:

Idaho taxable income	-\$1,586,298
Idaho Code section 63-3021(b) adjustments:	
Idaho capital gains deduction	324,831
Itemized deductions	50,410
Personal exemptions	<u>6,200</u>
Idaho net operating loss	<u><u>-\$1,204,857</u></u>

When the husband filed his Idaho income tax return for taxable year 2005, he did so as married filing separately. In December 2007, the petitioners filed an amended return for taxable year 2005 changing from married filing separately to married filing jointly.

The 2004 Idaho net operating loss was used to offset the 2005 income as follows:

	<u>As originally filed</u>	<u>As amended</u>
Idaho net operating loss carryover	-\$1,204,857	-\$1,204,857
Idaho taxable income for 2005	-1,022,862	-1,008,110
Add back Idaho net operating loss	1,204,857	1,204,857
Idaho Code section 63-3021(b) adjustments:		
Idaho capital gains deduction	215,074	215,074
Itemized deductions	32,522	65,019
Personal exemptions	<u>3,200</u>	<u>6,400</u>
Income offset by Idaho net operating loss	<u>432,791</u>	<u>483,240</u>
Idaho net operating loss carryover to 2006	<u><u>-\$772,066</u></u>	<u><u>-\$721,617</u></u>

In December 2007, the petitioners filed their Idaho individual income tax return for taxable year 2006 and claimed \$921,799 of Idaho net operating loss carryforward from 2004. In the NODD, the ITA adjusted the net operating carryforward downward by \$200,182. The difference between the two numbers relates to the amount utilized in 2005 as follows:

	<u>Per return</u>	<u>Per NODD</u>	<u>Difference</u>
Idaho net operating loss carryforward	-\$1,204,857	-\$1,204,857	\$0
Amount used in 2005	283,058	483,240	-200,182
Amount claimed in 2006	<u><u>-\$921,799</u></u>	<u><u>-\$721,617</u></u>	<u><u>-\$200,182</u></u>

As mentioned above, neither the husband nor the wife dispute the ITA's adjustment to the Idaho net operating loss carryforward; however, they do ask that the penalty be abated, and the wife further argues that the husband is solely responsible for the additional liability.

In the PROPERTY SETTLEMENT AGREEMENT INCORPORATED AND MERGED WITH AND INTO JUDGMENT AND DECREE OF DIVORCE, it states on page 11, section 8, that the husband "shall pay all state and federal income taxes, interest and penalties, if any, for all years prior to January 1, 2008."

Idaho Code § 63-3031 sets forth authority regarding joint returns. It states in pertinent part:

If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

Pursuant to the petitioners filing a joint return, the state of Idaho had the right to hold the petitioners jointly and severally liable. The state of Idaho did not subsequently surrender any of those rights. One spouse may have a cause of action against the other if they are caused to pay an amount to the state of Idaho contrary to an agreement between the parties to the return. However, the state remains in a position to hold the spouses jointly and severally liable. Joint

and several liability simply means the state may collect any portion of the liability up to the entire amount from either spouse.

Interest was included in the NODD in accordance with Idaho Code section 63-3045(6).

With respect to the Idaho Code section 63-3046(d) 10 percent substantial understatement penalty, the statute states:

- (d) (1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent (10%) of the amount of any underpayment attributable to such understatement.
- (2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:
 - (i) Ten percent (10%) of the tax required to be shown on the return for the taxable year, or
 - (ii) Five thousand dollars (\$5,000).
- (3)
- (4) For purposes of paragraph (d)(2) of this section, the term “understatement” means the excess of:
 - (i) The amount of tax required to be shown on the return for the taxable year, over
 - (ii) The amount of the tax imposed which is shown on the return.
- (5) The amount of the understatement under paragraph (4) shall be reduced by that portion of the understatement which is attributable to:
 - (i) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or
 - (ii) Any item with respect to which the relevant facts affecting the item’s tax treatment are adequately disclosed in the return or in a statement attached to the return.
- (6) . . .
- (7) The state tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

Given the facts in this docket, the Commission finds that the substantial underpayment penalty is inapplicable as the relevant facts affecting the tax treatment of the Idaho net operating loss was adequately disclosed in the return and in a statement attached to the return. However, Idaho Code section 63-3046(a) states that “If any part of any deficiency is due to negligence or

disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.” When the petitioners filed their Idaho income tax return for 2006 in December 2007, they also filed an amended Idaho income tax return for 2005 that clearly showed the amount of Idaho net operating loss carryforward to 2006 as \$721,617, not \$921,799. Therefore, the Commission finds that the deficiency for 2006 was due to negligence on behalf of the petitioners. Accordingly, the Commission imposes the Idaho Code section 63-3046(a) negligence penalty.

WHEREFORE, the Notice of Deficiency Determination dated January 9, 2009, is hereby MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$7,808	\$390	\$1,552	\$9,750

Interest is calculated through July 31, 2010, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6)(c).

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

An explanation of the petitioners’ rights to appeal this decision is enclosed.

DATED this ____ day of _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.
