

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23383
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated July 15, 2010. The NODD asserted additional liabilities for Idaho income tax and interest in the total amount of \$3,541 for 2006 and 2007.

In the early 1990s, the petitioner and her now deceased husband invested money from the sale of their [Redacted] business with [Redacted] through [Redacted]. Mr. and Mrs. [Redacted] had dealt with Mr. [Redacted] as a customer of their [Redacted] business. Funds had been distributed from the investment with Mr. [Redacted] for the payment of the petitioner's quarterly tax payments. When the scheduled distribution in June 2008 was not made, the petitioner contacted her accountant. A subsequent investigation revealed that Mr. [Redacted] investment was a Ponzi scheme and that the money was apparently gone. The petitioner timely filed her 2008 federal income tax return filing with an election pursuant to Revenue Procedure 2009-20. In March 2010, the petitioner filed amended returns for 2006 and 2007 requesting that the interest income reported from the investment with Mr. [Redacted] be recharacterized as a recovery of capital rather than interest income, since there really was no income, but rather was a covering to prevent the discovery of the fraud allegedly perpetrated by Mr. [Redacted] and his associates.

Revenue Procedure 2009-20 states, in part:

By executing the statement provided in Appendix A of this revenue procedure, the taxpayer agrees –

* * *

(2) Not to file returns or amended returns to exclude or recharacterize income reported with respect to the investment arrangement in taxable years preceding the discovery year;

The recharacterization precluded by Revenue Procedure 2009-20 for federal purposes is precisely what the petitioner is attempting for Idaho purposes. The question then becomes whether the provision precluding the petitioner from recharacterizing the income for federal purposes also operates to preclude her from recharacterizing the income for Idaho purposes.

A similar matter was addressed by the Idaho Supreme Court in a case involving elections by the taxpayer as to whether to claim a federal credit or a deduction. The taxpayers, for federal purposes, chose to take the credit. They wished to take the corresponding deduction for Idaho purposes. The Court stated, in part:

We begin our analysis with the statute that declares the legislature's intent concerning the use of the Internal Revenue Code for state tax purposes.

It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state *subject only to the modifications contained in the Idaho law*; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions [etc.]...

Idaho Code § 63-3002 (Supp.1995) (emphasis added). The legislature has defined taxable income for state tax purposes, as follows:

The term "taxable income" means "taxable income" as *defined* in section 63 of the Internal Revenue Code, *adjusted* as follows: [several subsections follow]....

Idaho Code § 63-3022 (1989) (emphasis added). The Internal Revenue Code defines taxable income for a corporation to mean "gross income minus deductions allowed by [Chapter 1]." I.R.C. § 63(a) (emphasis added).

[2] In construing these statutes, we are directed by Bogner "to enforce the law as written." 107 Idaho at 856, 693 P.2d at 1058. If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. Hecla Mining Co. v. Idaho Tax Comm'n, 108 Idaho 147, 151, 697 P.2d 1161, 1165 (1985). Applying these principles of construction to the statutes that are involved in the present case, we conclude that federal taxable income is determined by deducting from gross income only those deductions "allowed" by chapter 1 of the Internal Revenue Code. Idaho taxable income is the same as federal taxable income, except that it is "adjusted" according to the subsections of Idaho Code § 63-3022. I.C. § 63-3002 indicates that this was the intent of the legislature.

Potlatch Corporation v. Idaho State Tax Commission, 128 Idaho 387, 388-389 (1996).

Through the filing of the election provided by Revenue Procedure 2009-20, a taxpayer is precluded from recharacterizing the income here in question for federal purposes. Idaho Code § 63-3002 makes it clear that the intent is to begin the computation of Idaho taxable income with federal taxable income *as defined in Internal Revenue Code § 63* and to make only the adjustments provided by Idaho law. No provision in Idaho law allows for the recharacterization sought by the petitioner. We find that the decision by the Idaho Supreme Court in Potlatch, is controlling.

THEREFORE, the Notice of Deficiency Determination dated July 15, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest (computed to January 31, 2012):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$3,421	\$ 0	\$3,421
2007	3,475	498	<u>3,973</u>
		Total	<u>7,374</u>
		Less Refund Retained	(3,421)
		TOTAL DUE	<u>\$3,973</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 enclosed.

DATED this _____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.
