

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 23393 |
| [Redacted],                     | ) |                  |
|                                 | ) |                  |
| Petitioners.                    | ) | DECISION         |
| _____                           | ) |                  |

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated July 30, 2010, asserting an additional liability for Idaho income tax and interest in the total amount of \$6,550 for 2006.

The petitioners held interests in pass-through entities. They claimed losses from several of these entities. Since the deduction of such losses is limited to the taxpayer's basis in such entities, the auditor asked for documentation to establish the petitioners' basis in these entities. The requested documentation was not supplied. Therefore, the auditor disallowed the losses in question and issued the Notice of Deficiency Determination referred to above.

Internal Revenue Code § 1366 sets out the limitations of losses from S corporations. It states, in part:

- (d) Special rules for losses and deductions.
  - (1) Cannot exceed shareholder's basis in stock and debt.
- The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of
- (A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraphs (1) and (2)(A) of section 1367(a) for the taxable year), and
  - (B) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

Internal Revenue Code § 704 sets out the limitation for the deduction of partnership losses. It states, in part:

(d) Limitation on allowance of losses.

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

The United States Supreme Court stated of deductions:

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 Company, Inc. v. Helvering, 292 U. S. 435, 440 (1934).

The petitioners have the burden of establishing their right to the deductions sought. They failed to supply the necessary records to establish their basis in the relevant entities. They stated in one of their letters:

As with most closely owned businesses, when there are cash needs, we made those transfers. The number of transactions would make the issuance of notes or a schedule of transfers too cumbersome to be effective.

The petitioners have failed to carry their burden of proof. Accordingly, the auditor's adjustment is affirmed.

THEREFORE, the Notice of Deficiency Determination dated July 30, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest (computed to August 31, 2011):

| <u>YEAR</u> | <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|-----------------|--------------|
| 2006        | \$ 5,421   | \$957           | \$6,378      |

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

An explanation of the petitioners' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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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.

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