

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

In the Matter of the Protest of )  
 ) DOCKET NO. 23245  
[Redacted], )  
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 )  
Petitioner. ) DECISION  
 )  
\_\_\_\_\_ )

BACKGROUND

On June 10, 2010, the Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Petitioner).<sup>1</sup> The Petitioner filed a timely protest on August 10, 2010, and provided additional information in response to the audit adjustments. A modified NODD was issued on May 13, 2011. Several of the original issues were resolved and accepted by Audit with the additional information provided. An additional protest letter was filed on June 20, 2011, disputing the disallowance of some capital loss carrybacks for exceeding the statute of limitations on making a request for refunds. In 2000, [Redacted] completed the takeover of [Redacted]. In 2006, [Redacted] became a subsidiary of [Redacted], a [Redacted]. The case was transferred to the Tax Policy Division on November 29, 2011, for review.

ISSUES

1. Did the statute of limitations for filing a claim of refund for the carryback into 1995 and 1997 of a federal net capital loss incurred in the tax year ended December 31, 1998, expire prior to the Petitioner filing the amended Idaho Corporation Income Tax return filed on October 15, 2010?

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<sup>1</sup> Included with the term “Petitioner” are those corporations with an Idaho income tax liability as reflected on the Audit Division’s schedules 1100.1 through 1100.3 attached to and made part of the NODD.

2. Did the statute of limitations for filing a claim of refund for the carryback into 1997 of a federal net capital loss incurred in the tax year ended November 30, 1999, expire prior to the Petitioner filing the amended Idaho Corporation Income Tax return filed on October 15, 2010?

### DISCUSSION

The Petitioner timely filed its Idaho Corporation Income Tax Return for taxable years 1995, 1996, 1997, 1998, and 1999. The time period for filing a refund claim under Idaho's normal three-year statute of limitations found in Idaho Code section 63-3072(b) for 1995, 1996, 1997, 1998, and 1999 expired in 1999, 2000, 2001, 2002, and 2003, respectively.

On July 14, 1999, the Petitioner filed a [Redacted] "[Redacted]" with the [Redacted] requesting refunds from the application of a capital loss carryback originating in the December 31, 1998, taxable year. This loss was reported on the Petitioner's original [Redacted] for the year ended December 31, 1998. This was not the result of later [Redacted] audits. A copy of the 1998 [Redacted] tax return was provided by the Petitioner during the audit. The date and amount were verified with the [Redacted] records. No amended Idaho Corporation Tax returns were filed at that time to claim the capital loss carryback from 1998 to 1995 and 1997.<sup>2</sup> Under federal law, a taxpayer has one year from the end of the loss year in which to file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a capital loss carryback. Idaho does not have a similar provision. Prior to tax year 2000, Idaho allowed capital losses to be carried back for 3 years.<sup>3</sup>

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<sup>2</sup> Idaho Income Tax Administration Rule 880.04 requires that a claim for a refund be on an amended return and properly signed with an explanation.

<sup>3</sup> In 2000, Idaho reduced the carryback for capital losses and net operating losses to 2 years.

The amounts of the loss and application were as follows:

Net capital loss incurred in tax year 1998	\$(76,616,885)
Applied in tax year 1995	5,693,625
Applied in tax year 1997	<u>70,923,260</u>
Amount available for carryover	<u>\$ 0</u>

On November 16, 2000, the Petitioner filed a [Redacted] “[Redacted]” with the [Redacted] requesting refunds from the application of a capital loss carryback originating in the November 30, 1999, taxable year. This loss was reported on the Petitioner’s original [Redacted] for the year ended November 30, 1999. This was not the result of later [Redacted] audits. There is a copy in the audit file, and the date and amount were verified with the [Redacted] records.

The amounts of the loss and application were as follows:

Net capital loss incurred in tax year 1999	\$(53,625,094)
Applied in tax year 1997	<u>53,625,094</u>
Amount available for carryover	<u>\$ 0</u>

The [Redacted] processed both [Redacted] in accordance with Internal Revenue Code section 6411 and remitted the requested refunds to the Petitioner in 1999 and 2000 respectively. No amended Idaho Corporation Tax return was filed at that time to claim the capital loss carried back from 1999 to 1997.<sup>4</sup>

The [Redacted] examined the tax years ended December 31, 1991, 1992, 1993, 1994, 1995, 1996, 1997, & 1998 and issued reports documenting the “agreed to” issues on July 17, 2002, and April 5, 2004. There was a [Redacted] Form 870-AD covering years 1991 through 1998 signed by [Redacted] on April 5, 2004.

The Petitioner’s position is that the capital loss of \$76,616,885 originating from the 1998 taxable year and carried back to two separate years, 1997 and 1995 in the amounts \$70,923,260

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<sup>4</sup> See footnote 2.

and \$5,693,625 respectively, did not exist on an [Redacted] Appeals report dated April 5, 2004, provided to the Idaho State Tax Commission in May 2004.

The [Redacted] corrected, in the 2004 Revenue Agents Report, the application of the capital loss carryback originating in the short year ended November 1999 (\$6,130,293) to the 1996 taxable year instead of the 1997 taxable year. The reason for that change was that the carryback period of three years was in effect in November 1999. The carryback period changed to two years for tax years beginning January 1, 2000, or later. This timing change was reported to the Idaho State Tax Commission on amended returns filed October 15, 2010, for taxable years 1995 through 1998. The Commission accepted the change of years as a change in [Redacted] taxable income, by the [Redacted], as timely reported to Idaho under Idaho Code section 63-3072(d).

Similarly, the Petitioner states that the capital loss of \$53,652,094 from the tax year ended November 30, 1999, carried back to 1997 also did not exist on the April 5, 2004, [Redacted] appeals report, making the October 15, 2010, amended returns within the statute of limitations to report a change in [Redacted] taxable income to Idaho. Both amounts were referred to by the [Redacted] in a partial settlement dated July 17, 2002. The 1999 loss was increased by \$429,831 to \$54,081,925 by the [Redacted] settlement. This change was due to an increase in the amount of capital gain allowed in 1999 which in turn increased the amount of loss utilization allowed. This \$429,831 change was accepted by the Commission as a change in federal taxable income, by the [Redacted], as timely reported to Idaho under Idaho Code section 63-3072(d).

An informal hearing was held by telephone in the Boise office of the Commission on May 24, 2012. The Petitioner asserted during that hearing that even though they filed the

[Redacted] [Redacted] for refunds with the [Redacted], subsequent to that, the [Redacted] “recaptured” the refunds and did not restore them until the settlement with the [Redacted] was final. The Commissioner asked if the Petitioner had any documentation that would support the claim that the capital loss carrybacks had been disallowed and the refunds “recaptured.” The Petitioner indicated that they did and they agreed to provide it.

The Commission received a letter dated May 31, 2012, which restated the Petitioner’s argument about the contested tax years being open but did not contain any new documentation not previously received. There was no evidence that either of the capital loss carrybacks were directly audited, recaptured, denied, or materially altered by the [Redacted] after the initial refund requests were made. The adjustments explained above were due to the timing and utilization of loss. These adjustments were accepted by Audit.

The Joint Committee on Taxation approved the “[Redacted]” for tax years ending November 30, 1999, and March 31, 2000, on July 13, 2009. The [Redacted] posted the final adjustments for November 30, 1999, on September 21, 2009. The 1997 amended return first reporting the 1999 carryback into 1997 was filed with Idaho on October 15, 2010, more than one year from the [Redacted] of the year creating the loss. The time to file an amended return for a refund closed again on this loss under Idaho Code section 63-3072. The 1999 capital loss was the result of the original filed returns. It was not a result of the [Redacted] audits.

## LAW AND ANALYSIS

The relevant portion of the statutes and the rules (in effect in the years that created the capital loss carryback) that establish the requirements and limitations on reporting a change in federal taxable income and filing a request for a refund are:

**Idaho Code section 63-3069** states in part “Notice of adjustment of federal or state tax liability. (1) Upon final determination of any deficiency or refund of federal taxes written notice shall be immediately sent to the state tax commission by the taxpayer.

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

...

(c) Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (c) and (g) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

...

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

**Idaho Income Tax Administrative Rule 880. CREDITS AND REFUNDS.**

Section 63-3072, Idaho Code.

...

**02. Timely Claim Required For Refund.**

**a.** The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period.

**b.** The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury.

**c.** When an adjustment to the taxpayer(s) federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund.

...

**04. Closed Issues.** The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are

unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination.

...

**06. Reduction Or Denial Of Refund Claims.** If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors.

**07. Amended Federal Return.** Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer(s) Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution.

The capital losses at issue originated in the 1998 and the 1999 tax returns. The original statute of limitations for those years expired in 2002 and 2003. The Petitioner filed [Redacted] on July 14, 1999, and November 16, 2000, respectively, to claim a quick refund for each of the years. While the [Redacted] did audit the years involving the capital loss carrybacks, there is nothing to indicate that the capital losses were audited. The only changes were in the amount and timing of the loss utilization in the years receiving the carrybacks, not the losses themselves. Accordingly, only the adjustments that were made by the [Redacted] were permitted by Audit to be adjusted after the statute of limitations as defined by Idaho Code section 63-3072(d).

...Upon the expiration of the period of limitations as provided in subsections (c) and (g) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments. (Emphasis added.)

Idaho Code section 63-3072(f).

If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(Emphasis added.)

Following the language of Idaho Code section 63-3072(d), Audit allowed the specific items changed in the final [Redacted] report dated April 5, 2004, to be adjusted in the Modified Notice of Deficiency Determination dated May 13, 2011.

The Petitioner agreed to all the audited items in the [Redacted] dated April 5, 2004, except the calculation of interest on the [Redacted] notes. The Petitioner filed in court to challenge the [Redacted] method of determining the interest expense deduction for the years 1994 through 1998.

The Petitioner is arguing that the statute of limitations is held open on all items in the years that are still under dispute based on Idaho Code section 63-3069, which states in part:

Notice of adjustment of federal or state tax liability. (1) Upon final determination of any deficiency or refund of federal taxes written notice shall be immediately sent to the state tax commission by the taxpayer.

Idaho Code section 63-3072(d) defines final determination:

For purposes of this subsection, the term final federal determination shall mean the final resolution of all issues which were adjusted by the internal revenue service.

Idaho Income Tax Administrative Rule 880.04 in effect in both 1998 and 1999.

**04.** Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination.  
(Emphasis added.)

CONCLUSION

The Petitioner was requested by the Commission to provide documentation that would support the claim that the capital loss carrybacks were recaptured and not established until the issuance of the [Redacted] report. No new documentation was provided. The Commission can only conclude that such evidence does not exist and the capital loss carrybacks did not result from a final [Redacted] determination. Rather, the capital loss carrybacks originated in the year of the losses, not arising out of audit changes, and the Petitioner neglected to report those to Idaho at that time. The adjustments that were made were limited to the utilization of the carrybacks. The capital loss itself was not audited or adjusted. The statute is not held open to all items in a tax return but only the specific items adjusted by the [Redacted]. All the adjustments made by the [Redacted] during the audit process that were otherwise beyond the normal statute of limitations were allowed by Idaho.

THEREFORE, the Modified Notice of Deficiency Determination dated May 13, 2011, and directed to the Petitioner is hereby AFFIRMED by this decision.

<u>YEAR</u>	<u>REFUND CLAIMED</u>	<u>REFUND ALLOWED</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/94			\$ 27	\$ 0	\$ 31	\$ 58
12/31/95	(\$6,070)		17	0	17	34
12/31/96		(12,169)	0	0	(9,402)	(21,571)
12/31/97	(\$101,050)		9,734	0	8,699	18,433
12/31/98		(14,238)	0	0	(9,497)	(23,735)
11/30/99			0	0	0	0
				TOTAL REFUND		<u>(\$26,781)</u>

Interest is calculated through August 31, 2012, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.  
  
\_\_\_\_\_