

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24274
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated July 26, 2011. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax and interest in the total amount of \$144 for 2010.

The petitioners were, at all times relevant to this matter, nonresidents of Idaho. On the Idaho income tax return filed by the petitioners, they claimed a deduction for a net operating loss carried forward from prior years in the amount of \$2,839. The auditor disallowed the deduction stating that the petitioners had reported positive income for 2009, thereby indicating that there was no Idaho net operating loss in 2009 to be carried forward to the petitioners' 2010 return.

Idaho Code § 63-3021 sets forth the authority for the computation of a net operating loss. It stated [2009]:

- Net operating loss. (a) The term "net operating loss" means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero.
- (b) Add the following amounts:
- (1) The amount of any net operating loss deduction included in Idaho taxable income.
 - (2) In the case of a taxpayer other than a corporation:
 - (i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and
 - (ii) Any deduction for long-term capital gains provided by this chapter.
 - (3) Any deduction allowed under section 151 of the Internal Revenue Code (relating to personal exemption) or any deduction in lieu of any such deduction.

(4) Any deduction for the standard or itemized deductions provided for in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho Code, except for any deduction allowable under section 165(c)(3) of the Internal Revenue Code (relating to casualty losses) pertaining to property physically located inside Idaho at the time of the casualty.

Income tax deductions are to be strictly construed by the government. The U.S. Supreme Court stated, in part:

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

The Idaho Supreme Court has, more recently, stated, in part:

The Stangs urge this Court to “construe” the Idaho Income Tax Code in a manner that would permit the Stangs to avoid paying Idaho income tax on the \$8,000 distribution. They argue that because the Idaho Income Tax Code does not expressly address this situation, this Court should be free to construe the tax code in a manner that would prevent the Stangs from having to pay taxes to both California and Idaho on the same monies. When construing the provisions of the Idaho Income Tax Code, however, we must enforce the law as written. Potlatch Corp. v. Idaho State Tax Comm’n, 128 Idaho 387, 913 P.2d 1157 (1996). If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. Id. This Court has no authority to rewrite the tax code. Bogner v. State Dep’t of Revenue and Taxation, 107 Idaho 854, 693 P.2d 1056 (1984). Any exemption from taxation must be created or conferred in clear and plain language and cannot be made out by inference or implication. Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964). This Court does not have the authority to create deductions, exemptions, or tax credits. If the provisions of the tax code are socially or economically unsound, the power to correct it is legislative, not judicial. *Id.*

Idaho State Tax Commission v. Stang, 135 Idaho 800, 802-803 (2001).

The petitioners have failed to supply compelling argument or authority to support the deduction which they have claimed. Accordingly, the Commission finds that the auditor's adjustment should be affirmed.

THEREFORE, the NODD dated July 26, 2011, 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 October 31, 2012):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$141	\$9	\$150

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

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

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.
