

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25045
[Redacted],)	
)	
Petitioners.)	DECISION
)	
)	
_____)	

On May 24, 2012, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) reducing the amount of refund claimed for taxable years 2008 and 2010 and proposing additional income tax and interest for taxable year 2009, resulting in a refund in the total amount of \$2,502. The taxpayers filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

Background

According to Tax Commission records, the taxpayers have been filing Idaho resident income tax returns since taxable year 1995. Prior to becoming Idaho residents, the taxpayers resided in Missouri, where they apparently incurred a capital loss. The issue for this decision is whether or not there was a non-Idaho capital loss carryover into taxable years 2008, 2009, and 2010 and, if so, in what amount.

The taxpayers have stated that prior to becoming Idaho residents they owned an S Corporation and upon its dissolution, suffered a loss. Once residents of Idaho the taxpayers inherited a portfolio of mutual funds and stocks which were ultimately sold. These two events took place in taxable years 1992 and 1998 respectively and are the only investment activities that would affect the taxpayers' capital loss amount for the tax years in question.

The taxpayers stated that they have over the years relied on others with “more expertise” to prepare their returns. However, based on a review of the original returns filed by the taxpayers for taxable years 2007 through 2010, it appears the returns were self-prepared. In December 2010, the taxpayers’ 2007 and 2008 original returns were selected for audit and a subsequent adjustment was made to disallow certain unsubstantiated deductions. On April 20, 2012, the taxpayers submitted amended Idaho individual income tax returns for taxable years 2008 through 2010, prepared by a local Enrolled Agent (EA). These returns eliminated the addition to Idaho income that was previously reported by the taxpayers as a result of the capital loss carryover. An explanation for the amended returns was provided by the EA which stated, “To correct the ID addition for capital loss carryover incurred outside the state before becoming an Idaho resident. The non-Idaho loss was fully taxed before 2008. The add back should be 0.” These returns were forwarded to the Income Tax Audit Bureau (Audit) and a subsequent NODD was issued to adjust the add back to match the allowable federal loss amounts.

For taxable years 2007 through 2010, the taxpayers erroneously reported, as an addition to income the entire carryforward amount of their capital loss. However, the error was discovered after the statute of limitations for filing an amended return for taxable year 2007 had expired. The taxpayers’ representative argues that because the taxpayers cannot amend their 2007 return, and they have technically already paid tax on the full amount of the non-Idaho capital loss carryforward in taxable year 2007, they should not be required to pay tax for the addback corrections made in the NODD for taxable years 2008 through 2010. The taxpayers’ appointed representative also argues that a portion of the capital loss carryforward is attributable to the sale of the stock portfolio inherited by the taxpayers as Idaho residents.

Law and Analysis

The starting point for computing Idaho taxable income is federal taxable income as defined in the Internal Revenue Code. (Idaho Code section 63-3002.) Idaho Code section 63-3022 sets forth additions and subtractions to be applied, to the extent allowed, in computing Idaho taxable income. Subsection (i) requires an addition to taxable income for a capital loss carryover incurred outside the state before becoming an Idaho resident. It states the following:

(i) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss or passive loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons, other than corporations, add any capital loss or passive loss deducted which was incurred in activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (c) of this section or a capital loss or passive loss provided for in section 1212 of the Internal Revenue Code.

According to IRC section 1211(b), taxpayers may deduct losses from sales or exchanges of capital assets. The loss allowed is only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of (1) \$3,000 (\$1,500 in the case of a married individual filing a separate return), or (2) the excess of such losses over such gains.

Findings

The taxpayers' original 2007 through 2010 Idaho returns, with regard to the addition to federal taxable income, were filed erroneously. However, the statute of limitations to amend the

2007 return has expired. The taxpayers' EA amended the tax returns for the remaining years by changing the addition to income to zero instead of the allowable amount per federal and Idaho code. The EA has not provided any documentation to substantiate the amount of capital loss incurred by the taxpayers prior to becoming Idaho residents, any documentation to show the value of the stock portfolio, the date it was inherited, the dates the stocks were sold or how much they were sold for. The taxpayers have stated that they no longer have any documentation to support these transactions, and plead ignorance when it comes to the history and specifics for losses on their 1992 through 2002 tax returns. The taxpayers' representative would like the Commission to ignore the applicable code sections and allow deductions and credits based on logic and conservative assumption calculations.

It is well established in Idaho law that a taxpayer claiming a deduction, exemption, or credit bears the burden of establishing his or its entitlement to the same, both as to law and fact. Further, statutes allowing deductions and exemptions are "construed strongly against the taxpayer." Potlatch Corp. v. Idaho State Tax Com'n, 128 Idaho 387 (1996), citing Hecla Mining Co. v. Idaho Tax Com'n, 108 Idaho 147, 151, 697 P.2d 1161, 1165 (1985). In the present case, the taxpayers have not met their burden.

THEREFORE, the NODD dated May 24, 2012, is hereby APPROVED and MADE FINAL.

The taxpayers are due a refund, therefore no demand for payment is due or necessary.

<u>YEAR</u>	<u>REFUND CLAIMED</u>	<u>REFUND ALLOWED</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	(\$1,750)	(\$1,495)		(\$259)	(\$1,754)
2009			\$222	27	249
2010	(1,848)	(977)		(75)	(1,052)
				REFUND	<u>(\$2,557)</u>

Interest is calculated through April 5, 2013.

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.
