

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25099
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

BACKGROUND

On May 11, 2012, the Income Tax Audit Bureau (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Petitioners) denying an income tax refund for taxable year 2005 in the total amount of \$7,113. On July 10, 2012, the Petitioners filed a timely protest. The file was transferred to the Legal/Tax Policy Division on August 3, 2012, for resolution. A telephonic hearing was held on November 13, 2012. Commissioner [Redacted] attended the hearing, the Petitioners were represented at the hearing by [Redacted], their CPA, [Redacted], his associate, and [Redacted] a tax attorney associated with their office.

DISCUSSION

This is a statute of limitations issue. The refund being requested on the 2005 amended Idaho income tax return is the result of a Net Operating Loss (NOL) carryback from the 2007 taxable year. The original 2007 income tax return was filed with Idaho on October 15, 2008. The Revenue Operations Division of the Tax Commission flagged the return for review because of a large “other subtraction” on Form 39 described as “Federal NOL Carryback”. The 2007 return was referred to Audit for review. The auditor sent a letter on November 10, 2010, requesting an explanation of the NOL. The CPA informed the auditor that the [Redacted] had also reviewed the Petitioners’ 2007 [Redacted] return which was the origin of the NOL. [Redacted] completed their review on November 10, 2009, allowing refunds for both 2005 and 2006 from NOL carrybacks from 2007 and

2008. The [Redacted] report described the 2008 tax year as a no-change audit and 2007 as a no-change with adjustments. The [Redacted] auditor forwarded his case to be processed and refunds were issued for the 2005 and 2006 [Redacted] income tax returns based on the 2007 and 2008 NOL carrybacks. Audit closed the 2007 audit with no adjustments. A letter confirming the case was closed and that no adjustments were made, was sent by the Idaho auditor to the Petitioners on April 8, 2011. Rather than make any adjustments, Audit simply took the information that was provided on the original 2007 Idaho return and assisted the CPA in how to report that information on the Idaho return forms. There was no adjustment to the amount of NOL.

LAW AND ANALYSIS

The relevant statutes are:

(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 (b) and (h) 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.

63-3072(e) "If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the period of limitations prescribed in subsection (b) of this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month

following the end of the taxable year of the net operating loss or capital loss which results in such carryback.”

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.”

63-3072(b) says in part “...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.”

The NODD disallowed the refund based on Idaho Code § 63-3072(e). The Petitioners questioned whether Idaho Code § 63-3072(f) would keep the statute of limitations open beyond the fifteenth day of the fortieth month after the end of the year the NOL occurred. The normal statute of limitations is found in Idaho Code § 63-3072(b). The original 2005 Idaho Income Tax return was filed on October 15, 2006. The normal statute of limitations closed on October 15, 2009, for that return. For a 2007 NOL, the fifteenth day of the fortieth month is April 15, 2011. Idaho Code § 63-3072(e) typically will keep the statute open longer than the normal three years and Idaho Code § 63-3072 (f) will suspend the other sections in the case of an audit adjustment that affects the amount of NOL. Idaho Code § 63-3072(d) keeps the statute open for the later of the original three years or an additional one year from the date of the final federal determination. The federal “no-change” audit, was signed by the Petitioners’ Power of Attorney, on November 10, 2009. One year later would be November 10, 2010, before the fifteenth day of the fortieth month after the end of the loss.

CONCLUSION

Having reviewed the file, the tax returns both original and amended filed with the Idaho State Tax Commission, and the information provided during the telephonic hearing and the relevant law and rules, the Commission makes this decision. Idaho Code § 63-3072(f) does not apply in this case. There were no adjustments made during the statute of limitations for the 2007 taxable year that affected the amount of NOL. There were no adjustments made by either the [Redacted] or the Tax Commission auditor to the amount of the NOL. The only thing done was assisting in properly reporting the losses that had occurred. The next longest statute that applied is Idaho Code § 63-3072(e) the fifteenth day of the fortieth month following the end of the taxable year in which the NOL occurred or April 15, 2011. Audit encouraged the CPA to file the 2005 amended return to request the refund on February 24, 2011, and again on February 28, 2011, prior to the 63-3072(e) statute. The 2005 amended return was filed on April 14, 2012 and received by the Tax Commission on April 16, 2012, nearly a full year after the statute of limitations had closed.

The CPA raised the question in both their written protest and during the telephonic hearing of whether the correspondence with the auditor was tantamount to having filed the 2005 amended return. The [REDACTED] auditor processed the carryback amounts and generated refunds without the Petitioner having to file anything else. However, Idaho requires that any amended return requesting a refund be on the proper tax return form and signed.

Idaho Income Tax Administrative Rule:

880. 04. Amended Returns Required as Refund Claims. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring 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.
(Underline added.)

It is clear from a review of the facts and the timeline that the statute of limitations for the 2005 taxable year was closed prior to the Petitioners filing their request for a refund from the 2007 NOL. The correspondence with the Idaho auditor did not equate to filing an amended return.

THEREFORE, the Notice of Deficiency Determination dated May 11, 2012, directed to [Redacted] is hereby AFFIRMED.

<u>YEAR</u>	<u>REFUND CLAIMED</u>	<u>REFUND ALLOWED</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/05	7,113	0	\$ 0	\$ 0	\$ 0	\$ 0

An explanation of the Petitioners' 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.

Copy mailed to:

[Redacted]