

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25153
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

BACKGROUND

On June 12, 2012, the Audit Bureau (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted](Petitioners) proposing income tax, penalty, and interest for taxable years 2009 and 2010, in the total amount of \$1,726. On August 7, 2012, the Petitioners filed a timely protest. The file was transferred to Tax Policy on June 1, 2012, for resolution.

ISSUES

1. Whether the taxpayers lose an Idaho Net Operating Loss (NOL) carryover for failing to make the election to forgo the carryback on a prior year return, thus absorbing the losses in prior years that are closed to statute.

LAW AND ANALYSIS

Idaho Code § 63-3021 says:

- (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.

Idaho Code § 63-3022 (c)(1) addresses the subtraction of net operating losses:

A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term “income” as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

Underline added.

Idaho Income Tax Administrative Rule 201.03.c says:

“Adjustments may be made even though the year is closed to the statute of limitations.”

Rule 201.04.b.ii:

“For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss carryback is applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed.”

Rule 201.04.d:

“If the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback may not result in a refund for the closed taxable year.”

Underline added.

Rule 201.05.a:

“The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires.”

Timing and Method of Electing to Forego the Carryback.

Rule 201.05.c:

“If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a., it is considered untimely and the net operating loss is applied as provided in Paragraph 201.04.b.”

DISCUSSION

The Petitioners had an Idaho NOL on both taxable years 2005 and 2006. The Petitioners did not make an election to forego the NOL carryback on either the 2005 or 2006 Idaho Income tax returns. Not realizing the losses should have been carried back at that time, the Petitioners carried the losses forward until 2009 and 2010.

The corrected calculation made by Audit absorbed the loss against the income in 2003 and 2004, which are closed by the statute of limitations. There was no loss to be carried forward into 2009 and 2010. The Petitioners’ argument for redetermination of the tax liability is explaining that their intent was to carry the loss forward in 2005 and 2006. Unfortunately, the tax returns filed do not reflect that intent. The law and rules are clear about how NOLs are to be utilized based on whether the election to forego the carryback is made or not. This issue has long been settled by the Commission, and by the courts¹.

CONCLUSION

Having reviewed the information available and the relevant law, the Commission makes this decision. Audit was correct in recalculating the Petitioners’ tax liability for taxable years 2009 and 2010.

¹ T.C. Memo. 2006-70, 2006 WL 931925 (U.S.Tax Ct.); ISTC Docket No. 18469.

THEREFORE, the Notice of Deficiency Determination dated June 12, 2012, and directed to [Redacted] is hereby AFFIRMED by this decision.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/09	\$613	31	63	707
12/31/10	923	46	50	<u>1,019</u>
		PAYMENT	RECEIVED	<u>(1,726)</u>
			TOTAL	<u>\$0</u>

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

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
