

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25506
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated November 6, 2012. The Notice of Deficiency Determination asserted additional liability for Idaho income tax and interest in the total amounts of \$246, \$338, and \$227 for 2009, 2010, and 2011, respectively.

The auditor proposed adjustments to the petitioners' returns. Some issues were conceded by the petitioners. The only remaining issue for decision is whether the petitioners are entitled to capital losses (both long term and short term) carried forward to the years here in question.

The petitioners claimed the loss here in question as a capital loss carryforward from 2001 or some prior year. The auditor asked the petitioners for documentation for the losses producing the losses carried forward. The petitioners stated that they had no such documentation. They stated that the loss was from the sale of stock traded through a brokerage firm which had been merged into another firm in 2006. Subsequently, the petitioners reported that they contacted the new firm only to find that the records they needed were no longer available. An attempt was also made to obtain the federal returns for the year or years of the losses. Again, it was found that this information was no longer available.

The petitioners also contend that the Commission was barred from adjusting the losses carried forward due to the expiration of the statute of limitations having expired to adjust the years of the losses.

The U. S. Tax Court addressed such an issue as follows:

Section 165(a) generally permits the deduction of losses sustained during the taxable year and not compensated for by insurance or otherwise. However, capital losses on the sale or exchange of capital assets are limited to the extent allowed under sections 1211 and 1212. Sec. 165(f). Subject to the limitations of section 1211, [footnote omitted] taxpayers can carry forward their capital losses to succeeding taxable years. Sec. 1212(b). Section 1212(b)(1)(B) provides that the excess of the net long-term capital loss over the net short-term capital gain is to be treated as a long-term capital loss in the succeeding taxable year.

Petitioners bear the burden of proving that they are entitled to the losses they claim. Rule 142(a); Benson v. Commissioner, 80 T.C. 789, 804 (1983); Beales v. Commissioner, T.C.Memo. 1992-608. Aside from their 1987 and 1988 tax returns, however, petitioner offered no evidence to substantiate these losses [footnote omitted] Moreover, an entry on a tax return does not establish the existence of a loss. Halle v. Commissioner, 7 T.C. 245, 250 (1946), affd. 175 F.2d 500 (2d Cir.1949); Warden v. Commissioner, T.C.Memo. 1995-176. Therefore, we sustain respondent's determination.

Foust v. Commissioner, T.C. Memo. 1995-481

The U. S. Supreme Court addressed such a matter as follows:

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

The Commission finds that taxpayers may be required to document any and all deductions claimed on their returns, and that the petitioners have failed to carry their burden in this matter.

THEREFORE, the Notice of Deficiency Determination dated November 6, 2012, 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 December 31, 2013):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$220	\$32	\$252
2010	223	22	245
2011	221	13	<u>234</u>
			<u>\$731</u>

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

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.
