

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25602
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	
_____	)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination dated February 20, 2013, asserting additional tax, penalty, and interest in the total amount of \$32,787 for 2005. The Notice of Deficiency was issued responding to an amended return.

The petitioners were residents of the state of Idaho during 2005. They filed their original 2005 Idaho income tax return in October 2006. They filed an amended Idaho 2005 income tax return in March 2010. The original 2005 filing reflected federal adjusted gross income of negative \$38,431, with no net operating loss being reflected on either the federal or the Idaho income tax returns. The amended return reflected federal adjusted gross income in the amount of negative \$463,889 including the deduction of a federal net operating loss in the amount of \$833,989. The net operating loss was carried back from 2008.

In computing Idaho taxable income for 2005, a taxpayer was entitled to carry a net operating loss back two years. Idaho Code § 63-3022 stated [2007], in part:

(c) (1) 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.

In this case, the petitioners are attempting to carry the loss back three years. Additionally, they are attempting to carry back more than the \$100,000 limit set out in the statute. The auditor disallowed the carryback of the 2008 net operating loss. The petitioners have provided no authority to support their position that they are entitled to carry the 2008 loss in the amount of \$833,989 back to 2005. The Commission finds that they are not so entitled.

The petitioner wife has indicated that she wishes to protest the Notice of Deficiency Determination based upon either innocent spouse relief pursuant to Internal Revenue Code § 6015, or as a hardship. The state of Idaho has no provision comparable to Internal Revenue Code § 63-6015. The petitioners were provided with a financial statement form and asked to complete it and return it to the Commission, that the Commission might have a reasonable basis for determining whether there was a hardship in this case. The financial statement form was not returned to the Commission staff. Accordingly, the Commission has no reasonable basis for a finding of hardship, and therefore, makes no such finding.

THEREFORE, Notice of Deficiency Determination dated February 20, 2013, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (computed to December 15, 2013):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$22,253	\$2,225	\$8,711	\$33,189

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.  
  
\_\_\_\_\_