

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25908
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

BACKGROUND

On June 21, 2013, the Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Petitioner) proposing income tax and interest for taxable year 2011 in the total amount of \$28,259. On August 21, 2013, the Petitioner filed a timely protest. On June 1, 2013, the file was transferred to the Legal/Tax Policy Division for resolution. On February 3, 2014, the Commission sent the Petitioner a letter that explained the methods available for redetermining an NODD. The Petitioner did not respond. The Commission now considers this case with the information available in the file.

ISSUES

1. Whether 63-3022O, which requires the add-back of any bonus depreciation, is a recalculation of [Redacted]taxable income and, therefore, increases the Internal Revenue Code (IRC) depletion deduction carryover and IRC § 199 deduction carryover that can be utilized on the 2011 Idaho Corporation Income Tax return.

DISCUSSION

The Petitioner is a corporation that does business in Idaho and at least one other state. The Petitioner claimed an “other subtraction” on line 29, of their 2011 Form 41, identified as being made up of “additional depletion deduction and additional (IRC) § 199 deduction”. The

Petitioner's position is that the amount taken as bonus depreciation back being added to taxable income on the Idaho Corporation Income Tax return increases the amount of depletion and § 199 expenses that can be utilized. Both of those are [Redacted] deductions that are limited by [Redacted] law to a certain percentage of taxable income in any tax year. Once those limits are reached, the balance is carried over to future years.

### LAW

The Idaho Code defines "taxable income" in § 63-3011B as [Redacted] taxable income.

Idaho Code § 63-3011B. Taxable Income. The term "taxable income" means federal taxable income as determined under the Internal Revenue Code.

The Petitioner's protest says that taxable income is "determined under the Internal Revenue Code." That is quoting 63-3011B, above. [Redacted] taxable income is the starting point that is then modified to reach "Idaho taxable income" as defined below.

Idaho Code § 63-3011C. Idaho taxable income. The term "Idaho taxable income" means taxable income as modified pursuant to the Idaho adjustments specifically provided in this chapter. (this chapter being the Idaho Income Tax Act)

Idaho Code § 63-3022. Adjustments to Taxable Income. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022R, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

One of those modifications has to do with bonus depreciation. Between September 11, 2001, and December 31, 2007, and again after January 1, 2010, Idaho required that amounts taken as bonus depreciation under IRC § 168 had to be added back to taxable income. It says the adjusted basis, depreciation and gains and losses be computed without regard to IRC § 168. It does not require recomputing taxable income, rather this is one of the modifications to get from taxable income to Idaho taxable income.

Idaho Code § 63-3022O (1) says in part, “The adjusted basis of depreciable property, depreciation and gains and losses from sale, exchange or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code and the adjusted basis of depreciable property, depreciation and capital gains and losses shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code, as amended by the “tax relief, unemployment insurance reauthorization and job creation act of 2010” and as amended by the “small business jobs act of 2010”...”

The Commission has addressed this issue before. See Docket number 20716, which deals with the limit on charitable contributions. A similar situation was decided by the Idaho Supreme Court in Potlatch Corp. v. Idaho State Tax Com’n, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (Idaho, 1996). Therein, the court held the following:

In Bogner, the Court found I.C. § 63-3022(1) to be dispositive because it referred to “itemized deductions as defined” in various sections of the Internal Revenue Code, without requiring that the deductions be “allowed” as provided in I.R.C. § 63. In the present case, there is no subsection of I.C. § 63-3022 comparable to I.C. § 63-3022(1) that would allow Potlatch and ESI to adjust their federal taxable income defined in I.R.C. 63 by deducting the ESOP contributions and R & D expenses which were not allowed by Chapter 1 of the Internal Revenue Code. (citing Bogner v. State Dep’t of Revenue & Taxation, 107 Idaho 854, 693 P.2d 1056 (1984).) Underline added.

### CONCLUSION

Idaho uses the IRC to calculate [Redacted] taxable income as a starting point. Then, only modifications that are specified in the Idaho Income Tax Act and related administrative rules are applied to reach Idaho taxable income. Idaho Code § 63-3022O results in the bonus depreciation taken on the [Redacted] return being added back to taxable income in calculating Idaho taxable income. Since the basis is calculated without taking IRC § 168 into account, the depreciation expense for those assets will be larger and any gains or losses may be different from the [Redacted]. Idaho Code § 63-3022O is one of the adjustments referred to in § 63-3011B. The

additional depletion and additional § 199 deductions claimed by the Petitioner are not allowed by Idaho law.

THEREFORE, the NODD dated June 21, 2013, and directed to [Redacted] is hereby AFFIRMED.

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/11	\$26,942	\$2,550	\$29,492

Interest is calculated through November 28, 2014, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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.  
  
\_\_\_\_\_