

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 26003
)
)
Petitioner.) DECISION
)
_____)

The petitioner protests the Notices of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated July 25, 2013, and November 27, 2013. The Notice of Deficiency Determination dated July 25, 2013, asserted additional liability for Idaho income tax, penalty, and interest in the total amount of \$20,628.57 for 2012. The Notice of Deficiency Determination dated November 27, 2013, denied a requested refund in the amount of \$1,026,435 plus applicable interest.

There are two issues to be resolved in this docket. The first is the definition of federal taxable income for purposes of Idaho Code § 63-3011B with regard to the [Redacted] estate for 2012. The second, regarding the proper computation of the credit for taxes paid another state, is relevant only if the auditor is found to be correct with regard to the first issue.

BACKGROUND

The decedent died in 2010. The decedent’s estate held substantially appreciated real property located in [Redacted]. This property was sold in 2012. A [Redacted] election allowed the estate to elect to use a modified carryover basis for the assets in exchange for not having to pay the [Redacted] estate tax. This election was made by the administrator of the estate. The estate initially filed its Idaho income tax return using the same basis for the appreciated property as was used for [Redacted] purposes. Following this, a notice of deficiency determination was issued to the petitioner adjusting the credit for taxes paid to [Redacted]. Following this, the

petitioner filed an amended Idaho income tax return changing the basis used in computing the gain from the sale of the property to reflect a stepped up basis, thereby dramatically reducing the amount of the reportable gain. The auditor for the Commission denied this amended return. The petitioner filed an appeal to both the adjustment of the credit for taxes paid another state and the denial of the amended Idaho income tax return.

DISCUSSION

The petitioner contends that, for Idaho income tax purposes, the basis of assets received from a decedent who died in 2010 should be stepped up, even though they were not stepped up for federal income tax purposes. The auditor contends that the basis used for computing the Idaho income tax liability should be the same as that used for federal income tax purposes.

The crux of the issue lies in Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act (TRUIRJCA) of 2010. It states:

(c) Special Election With Respect to Estates of Decedents Dying in 2010- Notwithstanding subsection (a), in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.

The petitioner contends that the election set out in Section 301(c) of the TRUIRJCA was never made a part of the Internal Revenue Code. Therefore, the petitioner contends that, since “taxable income” as set out in the Idaho Income Tax Act is to be computed pursuant to the

Internal Revenue Code, the basis used should be as if the election (under § 301(c)) had not been made.

The petitioners cite Idaho Code § 63-3011B which stated:

TAXABLE INCOME. The term “taxable income” means federal taxable income as determined under the Internal Revenue Code.

The petitioners proceeded from Idaho Code § 63-3011B to the Internal Revenue Code for the definition of “taxable income” rather than proceeding to Idaho Code § 63-3004 where “Internal Revenue Code” is defined for Idaho income tax purposes.

The auditor cited Idaho Code § 63-3002 as authority for his position. Idaho Code § 63-3002 stated:

DECLARATION OF INTENT. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States

Administrative income tax rule 08 stated:

Terms. Terms not otherwise defined in the Idaho Income Tax Act or these rules shall have the same meaning as is assigned to them by the Internal Revenue Code including Section 7701 relating to definitions of terms.

Idaho Code § 63-3004 defined “Internal Revenue Code” for Idaho income tax purposes:

INTERNAL REVENUE CODE. (a) The term “Internal Revenue Code” means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions. (Underlining added.)

Administrative Rule 015 stated, in part:

Internal Revenue Code (Rule 15). Section 63-3004, Idaho Code. (3-20-97)

01. Interpretations. Interpretations of the Internal Revenue Code may be found in various sources. These sources include decisions of the Tax Court, Congressional Committee Reports, General Counsel Memoranda, Decisions of the Federal and State Courts on federal income tax issues and Treasury Regulations. These interpretations are adopted by this reference to the extent that they are not in conflict with or inconsistent with the Idaho Code or administrative rules. (3-20-97)

(Underlining added.)

The “Technical Explanation of the Revenue Provisions contained in the “Tax Relief, Unemployment Insurance Reauthorization, and Job Creation act of 2010” scheduled for Consideration by the United States Senate” prepared by the staff of the Joint Committee on Taxation stated, in part, at page 51:

In the case of a decedent who dies during 2010, the provision generally allows the executor of such decedent’s estate to elect to apply the Internal Revenue Code as if the new estate tax and basis step-up rules described in the preceding section had not been enacted. In other words, instead of applying the above-described new estate tax and basis step-up rules of the provision, the executor may elect to have present law (as enacted under EGTRRA) apply. In general, if such an election is made, the estate would not be subject to estate tax, and the basis of assets acquired from the decedent would be determined under the modified carryover basis rules of section 1022¹. This election will have no effect on the continued applicability of the generation skipping transfer tax. In addition, in applying the

¹ Therefore, an heir who acquires an asset from the estate of a decedent who died in 2010 and whose executor elected application of the 2010 EGTTRA rules has a basis in the asset determined under the modified carryover basis rules of section 1022. Such basis is applicable for the determination of any gain or loss on the sale or disposition of the asset in any future year regardless of the status of the sunset provision described below.

definition of transferor in section 2652(a)(1), the determination of whether any property is subject to the tax imposed by chapter 11 of the Code is made without regard to an election made under this provision.

Section 1 of the TRUIRJCA stated, in part:

SHORT TITLE; ETC.

(a) Short Title- This Act may be cited as the ‘Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010’.

(b) Amendment of 1986 Code- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section *or other provision*, the reference shall be considered to be made to a section *or other provision* of the Internal Revenue Code of 1986.

(Underlining and italics added.)

The legislative intent as set out in Idaho Code § 63-3002 clearly supports the auditor’s position. However, the statement of intent is a general statute. A basic tenet of statutory construction is that the more specific statute or section controls over a statute that is more general. Bolger v. Lance, 137 Idaho 792, 796, 53 P.3d 1211, 1215 (2002); Hagy v. State, 137 Idaho 618, 622, 51 P.3d 432, 436 (2002); Mulder v. Liberty Northwest Ins. Co., 135 Idaho 52, 57, 14 P.3d 372, 377 (2000). Where two statutes apply to the same subject matter, they are to be construed consistent with one another where possible, otherwise the more specific statute will govern. Huyett v. Idaho State University, 140 Idaho 904, 908, 104 P.3d 946, 951 (2004); Grand Canyon Dorries v. Idaho State Tax Commission, 124 Idaho 1, 4, 855 P.2d 462, 465 (1993). The Idaho Supreme Court has stated that it’s “primary duty in interpreting a statute is to give effect to the legislative intent as ascertained from the statutory language.” Ag Services of America, Inc. v. Kechter, 137 Idaho 62, 64, 44 P.3d. 1117, 1119 (2002), Adamson v. Blanchard, 133 Idaho 602, 605 990 P.2d 1213, 1216 (1999). The question to be resolved is whether the specific statute (Idaho Code § 63-3004) compels a different result than is suggested by the intent statute (Idaho Code § 63-3002).

In the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation

Act of 2010, Section 1(b) states:

Amendment of 1986 Code – Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(Underlining added.)

It is obvious from the provision above that there was more changed than just the “sections” of the Internal Revenue Code. It appears clear that the election here in question would be included as an “other provision.” Therefore, according to the language in the bill, this “provision” should be considered to have been made to the “Internal Revenue Code of 1986.”

When determining the plain meaning of a statute, “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.” In re Winton Lumber Co., 57 Idaho 131, 136, 63 P.2d 664, 666 (1936), Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 897, 265 P.3d 502, 510 (2011).

Idaho Code § 63-3004 states, in part, “The term ‘Internal Revenue Code’ means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2012.” The petitioner contends that since the election in question was not incorporated into the “Internal Revenue Code” it is not “in effect” for purposes of the Idaho income tax act. There is no question that the provision in question was in the TRUIRJCA as passed by the congress and is in the Statutes at Large. The Internal Revenue Code has been enacted as a separate code and is therefore “positive law.” Tax Analysts v. Internal Revenue Service, 214 F.3d 179, 183 (D.C.Cir. 2000). Even if there is a conflict between the original Congressional enactment contained in the Statutes at Large and a codification that has been enacted into positive law, the Statutes at Large control when (1) the meaning of the original enactment was

“clear and quite different from the meaning . . . ascribe[d] to the codified law,” and (2) “the revisers expressly stated that changes in language resulting from the codification were to have not substantive effect.” Washington-Dulles Transportation, Limited v. Metropolitan Washington Airports Authority, 263 F.3d 371, 378-379 (4th Cir. 2001), Cass v. United States, 417 U.S. 72, 82 94 S.Ct. 2167 (1974). The Code cannot prevail over the Statutes at Large when the two are inconsistent. Stephan v. United States, 319 U.S. 423, 426 (1943). Accordingly, the election here in question which was contained in the Statutes at Large, but not incorporated into the Internal Revenue Code was “in effect on the first day of January, 2012.”

Possibly the strongest statement as to whether the election in question was “in effect” is made by the filing of the petitioner’s 2012 federal income tax return. If the provision was not “in effect,” the petitioner would have used a stepped-up basis for purposes of it’s federal income tax return. The Commission notes that the income tax liability of the petitioner is determined pursuant to Internal Revenue Code § 1(e) which stated that, “There is hereby imposed on the taxable income of . . . every estate” based upon a table of rates and amounts. The “taxable income” used by the petitioner for this computation is the same as is asserted by the auditor as being correct.

“Taxable income” is not separately defined in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The question is whether an election available to and made by the petitioner for a prior year (2010) causes “taxable income” to be different in a subsequent year (2012). It appears that the income tax imposed by the federal government was upon the “taxable income” of the estate. The petitioner’s argument is that “taxable income” as used in Internal Revenue Code § 1(e) is not that defined in the Internal Revenue Code. The Commission finds that the petitioner’s argument is contrary to both the language in the Tax

Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 and the Internal Revenue Code as defined in Idaho Code § 63-3004.

The Internal Revenue Code, as in effect at the end of 2010 and 2012, did require the petitioner to use the modified carryover basis in determining the basis of the assets received from the decedent. While the verbiage of the election in question was not incorporated in the Internal Revenue Code, the provision was no less effective than if it had been so incorporated.

The other issue is the determination of the proper amount of the credit for taxes paid to another state. The authorization for the credit for taxes paid another state is provided by Idaho Code § 63-3029 which stated, in part:

(ii) The credit provided under this section to an estate or trust shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. "Federal total income of the estate or trust derived from sources in the other state" shall be determined as provided under section 63-3026A, Idaho Code, as if the estate or trust was a nonresident. (Underlining added.)

The amount of the Idaho tax shown on the Idaho income tax return (\$1,100,262) is established above. The amount of the denominator (\$14,931,223 (federal total income of the estate)) is not disputed. The only remaining disputed number is the numerator of the fraction.

The other state involved did not adopt the law providing that the basis of assets should be the same as was used for the determination of [Redacted] taxable income. The amount that the petitioner reflected on its original Idaho income tax return as having been "derived from sources in and taxed by the other state" was \$14,887,850. The "total income" shown on the income tax return for the other state was \$691,761. The Commission finds that the amount taxed by the other state was \$691,761 and not \$14,887,850. Therefore, the amount of the credit should be \$50,975 ($\$1,100,262 \times \$691,761 / \$14,931,223$).

THEREFORE, the Notices of Deficiency Determination dated July 15, 2013, and November 27, 2013, are hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (computed to December 31, 2014):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$20,190	\$304	\$1,238	\$ 21,732

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

An explanation of the taxpayer'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.

Copy mailed to:

[Redacted]