

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26092
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated November 22, 2013. The Notice of Deficiency Determination asserted additional Idaho income tax and interest in the total amount of \$3,281 for 2010.

The auditor for the Commission made two adjustments to the income reported by the petitioners. The petitioners protest both of these adjustments. Both of these adjustments were made to the income reported by the petitioners on their 2012 return. The petitioners claimed a net operating loss from their 2012 Idaho income tax return which was carried back to 2010. The adjustments made to the 2012 Idaho income tax return affected the amount of their 2012 Idaho net operating loss available to be carried back to their 2010 return. Accordingly, the petitioners' liability appears from their 2010 return.

The issues before the Commission for this docket are:

1. Did the petitioners have sufficient basis to entitle them to claim a loss from their wholly owned S Corporation during 2012, and
2. What portion, if any, of the distributions from Individual Retirement Accounts is properly includible in the computation of the petitioners' income for 2012.

The auditor disallowed a portion of the 2012 loss from the petitioners' S corporation pursuant to Internal Revenue Code § 1366, which provides that the losses may only be taken to the extent of the shareholder's basis in corporation. The petitioners contend that they had contributed a good deal of money to the corporation. However, the balance sheet of the corporation did not reflect any additional basis and the petitioners did not supply the auditor with sufficient documentation to show that the petitioners' funds had been contributed to the corporation.

Internal Revenue Code § 1366(d)(1) stated:

(d) Special rules for losses and deductions.

(1) Cannot exceed shareholder's basis in stock and debt.

The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of

(A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraphs (1) and (2)(A) of section 1367(a) for the taxable year), and

(B) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

The Ninth Circuit Court of Appeals, in addressing such a matter stated, in part:

It is, of course, not only the prerogative but the duty of the Commissioner and the Tax Court to carefully examine the transaction behind its formal facade to be certain that it is what it purports to be and that the substance of the transaction is within the governing statute. This particularly applies to advances of funds or property to a corporation by those possessing an ownership interest in it. Gilbert v. Commissioner of Internal Revenue, 262 F.2d 512 (2nd Cir. 1959); Lundgren v. Commissioner of Internal Revenue, 376 F.2d 623, 626 (9th Cir. 1967).

Hollenbeck v. Commissioner, 422 F.2d 2, 4 (9th Cir. 1970).

Petitioners bear the burden of proof to show that the checks they included in their tax bases were contributions to capital or caused the corporation to become indebted to them in that year. Wilson v. Commissioner, T.C. Memo 1991-544, Welch v. Helvering, 290 U.S. 111 (1933).

In the income tax returns filed by the petitioners' wholly-owned S corporation, there is no indication of any additional paid-in capital or any loans from the petitioners to their corporation during 2012. The 2011 and 2012 corporate returns were signed by the (unnamed) president of the corporation. It appears that [Redacted] is the president of the S corporation. Taxpayers who sign their tax returns are presumed to have knowledge of the contents of the returns. Cousins v. Commissioner, T. C. Memo 1995-129; Hayman v. Commissioner, 992 F.2d 1256, 1262 (2d Cir. 1993), affg. T.C. memo. 1992-228; Terzian v. Commissioner, 72 T.C. 1164, 1171 (1979); Pettinato v. Commissioner, T.C. Memo 1995-85.

The burden of proof with regard to deductions is upon the taxpayers. The U. S. Supreme Court stated, in part:

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 petitioners have not shown that they made any contributions or loans to the corporation during the relevant time period. They showed one deposit slip for one of the distributions from the petitioners' IRAs. However, the balance sheet at the end of the year showed that the funds so deposited had not remained in the corporation until the end of the taxable year. Accordingly, the Commission finds that the petitioners have failed to carry their burden of proof with regard to this deduction.

IRA DISTRIBUTIONS

The auditor determined that the petitioners had unreported income from IRA distributions made during 2012 in the total amount of \$20,762. The petitioners have provided additional information to establish that the Individual Retirement Accounts in question were ROTH IRAs. Neither of the petitioners had reached the age of 59½. Accordingly, the distributions were nonqualified distributions.

The petitioners provided documentation to establish that they had contributed \$18,000 to the ROTH IRAs. Accordingly, only the remaining \$2,762 is properly includible in the determination of the petitioners' Idaho taxable income.

THEREFORE, the Notice of Deficiency Determination dated November 22, 2013, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED, and THIS DOES ORDER, that the petitioners receive a refund of the following tax and interest (computed to October 31, 2014):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$1,788	\$ 414	\$2,202
		Less Refund held	(3,807)
		Refund Due Petitioners	<u>(\$1,605)</u>

An explanation of the petitioners' 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.
