

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26140
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

The petitioners protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated November 14, 2013. The Notice of Deficiency Determination (NODD) asserted additional liabilities for Idaho income tax and interest in the total amount of \$1,920 for taxable year 2010, and \$2,997 for taxable year 2011.

In taxable year 2009, the petitioners reported a “Ponzi loss” on Schedule A. For taxable years 2010 and 2011, petitioners claimed an Idaho net operating loss carryforward related to that loss. The auditor disallowed the Idaho Net Operating Loss (NOL) deduction claimed in 2010 and 2011. Petitioners protested the auditor’s findings.

Petitioners’ appeal letter states the following objections in part:

(1) Idaho State Tax Commission states the loss must be within the scope of IRC Section 163(c)(3) in order to apply and qualify for the Idaho NOL carryover. We believe the loss does fall within the scope of IRC Section 163(c)(3).

(a) Although on the tax return it is described as a ponzi scheme it is more appropriately described as a simple personal loss, due to criminal theft.

(2) We find this Notice of Deficiency to be an unconscionable action by the Tax Commission.

(a) Our 2009 tax return was filed in March of 2010. It is now 3 and ½ years later that we are getting a Notice denying our claim on that tax return. It is beyond the standard 3 year statute of limitations and it is beyond reasonableness.

(3) This loan occurred with the great state of Idaho by two parties physically within Idaho.

The Commission sent the petitioners' appointed representative a letter that explained the methods available for redetermining an NODD. The representative did not respond. The Commission sent a follow-up letter to the representative and to the petitioners. A response was received from the representative, but no hearing was requested and no additional information was provided. Therefore, the Commission decided the matter based upon the information available.

The first objection to the NODD was the determination of the category of the loss that incurred in 2009. While the petitioners reported the loss on their return as a "Ponzi loss", they believe the loss is more appropriately categorized as a theft loss, due to them loaning money to someone who intentionally stole it. The petitioners looked to Revenue Ruling 71-381 as authority to show that the loss incurred in 2009 was a theft loss and deductible under IRC section 163(c)(3). The petitioners also provided a copy of a promissory note dated July 24, 2007, for a loan between [Redacted] and [Redacted], to support this position. Based on this information, the Commission agrees the loss incurred by the petitioners would be deductible under IRC section 163(c)(3) as a theft loss. But is a theft loss deductible under 163 (c) (3) allowed in the computation of Idaho net operation loss?

Idaho Code § 63-3021 defines a net operating loss and how it is computed for Idaho purposes. It states in pertinent part:

Net Operating Loss. (a) The term "net operating loss" means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero (0).

(b) Add the following amounts:

(1) The amount of any net operating loss deduction included in Idaho taxable income.

(2) In the case of a taxpayer other than a corporation:

(i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and

(ii) Any deduction for long-term capital gains provided by this chapter.

(3) Any deduction allowed under section 151 of the Internal Revenue Code (relating to personal exemption) or any deduction in lieu of any such deduction.

(4) Any deduction for the standard or itemized deductions provided for in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho Code, except for any deduction allowable under section 165(c)(3) of the Internal Revenue Code (relating to casualty losses) pertaining to property physically located inside Idaho at the time of the casualty. (Underlining added.)

The petitioners have argued, and the Commission agrees, that the loss incurred in taxable year 2009 was a loss due to theft. However, based on the above code section, itemized deductions, except those related to a casualty loss, must be added back when calculating the amount of an Idaho net operating loss. Following Idaho Code, the petitioners do not have an Idaho NOL in taxable year 2009 that could be carried forward to their 2010 and 2011 Idaho individual income tax returns.

The second objection waged by the petitioners was related to the amount of time that elapsed between the date their 2009 Idaho income tax return was filed and the date they were notified of the adjustments. Idaho Code section 63-3068 allows three years from the later of the date a return is due or the date a return is filed to issue a notice of deficiency. Idaho Income Tax Administrative Rule 201.03 allows adjustments to be made in years otherwise closed in order to determine the correct amount of carryover in open years. Idaho Income Tax Administrative Rule 201.03 states:

03. Adjustments in Carryback and Carryover Years.

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year must be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years.

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year.

c. Adjustments may be made even though the year is closed due to the statute of limitations.

The NODD, dated November 14, 2013, makes adjustments to taxable years 2010 and 2011. The return for taxable year 2010 was due April 15, 2011. The statute of limitations for audit adjustments would be April 15, 2014. For taxable year 2011, returns were due April 15, 2012; the statute of limitations for audit adjustments would not expire until April 15, 2015. The NODD was well within the statute of limitations and the examination of the return for taxable year 2009, to determine the correct amount of Idaho NOL carryforward, was both necessary and allowable.

THEREFORE, the Notice of Deficiency Determination dated November 14, 2013, is hereby APPROVED and MADE FINAL.

IT IS ORDERED that the petitioners pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$1,743	\$248	\$1,991
2011	2,822	291	<u>3,116</u>
		TOTAL DUE	<u>\$5,104</u>

Interest is calculated through February 13, 2015.

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 _____ 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.
