

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 30806
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated January 7, 2014. The Notice of Deficiency Determination asserted an additional liability for Idaho income tax, penalty, and interest in the total amounts of \$2,802 and \$317 for 2011 and 2012, respectively.

The petitioner was, at all times relevant to this matter, a resident of Idaho. The petitioner filed his 2010 Idaho income tax return claiming a net operating loss (NOL) incurred in 2006 and 2007. The auditor reduced the amount of this loss, stating that the 2006 and 2007 NOLs should have been carried back to 2004 and 2005, since the petitioner had not elected to forego the carryback of the NOL. This reduced the amount of the NOL available to be carried forward to subsequent years. The auditor further reduced the amount of the NOL carried forward to 2011 and 2012, stating that the NOLs had not properly been applied to the petitioner's 2008 and 2009 Idaho income tax liability. These reductions in the amount of the NOL available to be carried forward, produced the deficiency. The petitioner appealed.

In reviewing the petitioner's 2006 and 2007 Idaho and [Redacted] income tax returns, the Commission finds no indication that the petitioner intended to forgo the carryback of the NOL. Therefore, the Commission finds that the auditor properly applied the net operating loss first to the prior two taxable years. In reviewing the petitioner's 2008 and 2009 Idaho income tax

returns, the Commission finds no mention of an Idaho net operating loss carried forward. The deduction was available, but the petitioner failed to claim the deduction.

Rule 201 set forth the manner prescribed for the making of the election to forego the carryback of the net operating loss. It stated, in part:

05. Timing and Method of Electing to Forego Carryback. (3-30-01)

a. Net operating losses incurred in taxable years beginning prior to January 1, 2001. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (3-30-01)

i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)

iii. The amount of the net operating loss. (3-20-97)

b. Net operating losses incurred in taxable years beginning on or after January 1, 2001. The election must be made by the due date of the Idaho loss year return, including extensions. Once the completed Idaho return is filed, the extension period expires. The election shall be made by either attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss or following the requirements of Subsection 201.05.a. (3-30-01)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Subsections 201.05.a. and 201.05.b., it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.04.b. (3-30-01)

The letter of protest filed by the petitioner, signed by both the petitioner and his tax return preparer stated, in part:

We do not agree with the proposed adjustments. The portion we do not agree with pertains to the imputed two year carryback. We intended for the loss to be carried forward, and completed our tax returns accordingly. Our tax software did not check the box which denoted the loss was to be carried forward, which admittedly is a shortcoming in the computer program. However, the State of Idaho reviews and tests all software brands before they can be sold to the public, and this shortcoming was not addressed.

In this case, the 2006 and 2007 net operating losses were neither carried back to the immediately preceding two taxable years, nor were they carried to the two subsequent years. The preparer hasn't disclosed the brand of the particular software that was used for those years. Also missing is an admission from the software provider stating that their software was incapable of checking the boxes on the returns or carrying the net operating losses either back or forward. The Commission has received no similar complaints from other preparers. Further, the Commission does not warrant the accuracy of any such software provider's products.

The Commission finds that the petitioner did not properly elect to forgo the 2006 or 2007 net operating loss carrybacks. The Commission further finds that these net operating losses must be reduced to reflect the proper absorption of the losses in 2004, 2005, 2008, and 2009 to properly compute the allowable loss available to be deducted on the petitioner's 2010 Idaho income tax return.

THEREFORE, the Notice of Deficiency Determination dated January 7, 2014, is 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 February 15, 2015):

YEAR	TAX	PENALTY	INTEREST	TOTAL
2011	\$2,509	\$125	\$258	\$2,892
2012	293	15	18	<u>326</u>
				<u>\$3,218</u>

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.
