

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39101
[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 October 29, 2014. The Notice of Deficiency Determination denied a refund of Idaho income tax in the total amount of \$7,174 for 2010.

The petitioners were, at all times relevant to this matter, residents of Idaho. They filed their 2012 Idaho income tax return claiming a net operating loss (NOL). The petitioners subsequently filed an amended 2010 Idaho income tax return purporting to carry their 2012 NOL back to 2010. The staff of the Commission denied this amended return, stating that since the petitioners had elected to forgo the carryback of the NOL, they could not carry the loss back to prior years.

The question addressed in determining the 2010 liability, is whether the petitioners are entitled to carry the loss back, rather than carrying the loss to a subsequent year. Idaho Code § 63-3022 stated [2012], in pertinent part:

(c) (1) A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) years succeeding the taxable year in which the loss arises in

order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. (Underlining added.)

The petitioners' 2012 (hard copy) Idaho income tax return was received by the Commission on May 13, 2013. In that return, as received by the Commission, the box was checked after the following the statement: "If you have an NOL and are electing to forgo the carryback period, check here."

The petitioners state that they did not understand the implication of checking the box electing to forgo the carryback of the NOL. They further state that they planned to, and subsequently did, hire an accountant to deal with the further handling of the net operating loss deduction.

There appears to be no question regarding the facts. The box was checked to elect to forgo the carryback of the NOL. The law is clear in stating that the election, once made, is irrevocable.

The petitioners argue that the petitioners' 2012 return was filed in error. 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 Tax Court addressed such a matter as follows:

In attempting to minimize the weight to be given his own, the estate's, and the partnership's income tax returns, Hubert testified that he merely signed them as prepared by a certified public account, and petitioner contends, on reply brief, that Hubert was 'firmly in the hands of not too capable advisors.' Even if this is so, the fact remains that Hubert did sign these returns and we cannot presume that he was completely oblivious to their content and representations. Estate of Ethel M. Bullock v. Commissioner, T.C. Memo 1960-204.

The Commission finds that the petitioners chose the structure of their transaction and may not, now, disavow their chosen treatment in favor of another structure. *See Commissioner v. National Alfalfa Dehydrating*, 417 U.S. 134, 149 (1974). Accordingly, the Commission must affirm the Notice of Deficiency Determination, thereby denying the requested refund.

THEREFORE, the Notice of Deficiency Determination dated October 29, 2014, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
