

NOL and related records, Audit noticed in taxable year 2009 Petitioner's federal return was audited by the Internal Revenue Service (IRS) resulting in an adjustment to Petitioner's federal adjusted gross income (AGI). Petitioner did not file a Form 40, Idaho Individual Income Tax Return for taxable year 2009, but was carrying forward an Idaho NOL for 2009. Audit used Petitioner's 2009 federal audit results to calculate the Idaho NOL for 2009 which was absorbed in taxable years 2010 through 2012. The adjustments Audit made to Petitioner's Idaho returns for the period 2010 through 2012 also resulted in out of statute refunds because Petitioner did not file amended returns.

In taxable year 2014 Petitioner's federal return was also audited by the IRS resulting in the recognition of a cancelled debt that was not included in Petitioner's federal AGI. The IRS at the conclusion of their audit for 2014 issued Petitioner a final determination that Petitioner did not report to the Commission. Petitioner's Idaho AGI for 2014 was increased as a result of the unreported income. Audit adjusted Petitioner's 2016 and 2017 Idaho returns because Petitioner was claiming a NOL deduction even though the NOL had previously been absorbed. Audit sent a billing letter to Petitioner showing the tax effects of the adjustments. Petitioner protested the adjustments. Audit issued a Notice and accepted Petitioner's protest. Audit transferred the matter for administrative review.

The Commission sent Petitioner a letter with two methods for redetermining a protested Notice. Per Petitioner's request an informal hearing was held but Petitioner did not provide any additional information. After the informal hearing Petitioner presented a settlement offer to the Commission which was not accepted. The Commission decided the matter based upon available information.

LAW AND ANALYSIS

Idaho Code¹ states that unless Petitioners elect to forgo the 2-year carryback any NOL must be carried forward up to 20 years or until absorbed, whichever is sooner. Here we find Petitioner did not complete and maintain a Form 56, Net Operating Loss Carryforward/Carryback schedule as a result Petitioner claimed a NOL deduction for 2016 and 2017 that had already been absorbed in previous years.

Idaho Income Tax Administrative Rule 201.02.b. states, "Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations but will not result in any tax due or refund for the closed taxable years." Audit prepared a net operating loss carryforward/carryback schedule and modified the audit report to include taxable years 2010 through 2012 NOL calculation. Any refund Petitioner would have been entitled too is out of statute. Since these years are out of statute for amendment, no refund will be issued.

Idaho Code requires that federal taxable income reported to the state of Idaho match the federal taxable income reported to the IRS. It is the intent² of the Idaho

¹ **Idaho Code section 63-3022** states in part: (b) Add the net operating loss deduction used in arriving at taxable income. (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 from income in the two (2) preceding years may be subtracted from income 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.

² **Idaho Code section 63-3002** states in part, 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,

Legislature to follow the federal determination of income subject only to modifications contained in Idaho law. There are no modifications in Idaho law that would allow Petitioners to exclude the IRS audit adjustment. Further assertion of the Legislature's intent is found in Idaho Code that taxpayers are to immediately notify the Commission of a final federal determination of a deficiency³.

Idaho Code⁴ also provides for the assessment of penalties if any part of any deficiency is due to negligence or disregard of rules. Petitioner was assessed a negligence penalty due to the substantial amount of errors contained in Petitioner's Idaho returns.

CONCLUSION

On appeal, a deficiency determination issued by the Commission "is presumed to be correct and the burden is on the taxpayer to show that the Commission's decision is erroneous." *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioners to provide adequate evidence to establish the amount asserted in the Notice is incorrect. Here, Petitioners did not provide adequate evidence. As a result, the Commission upholds the Notice.

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.

³ **Idaho Code section 63-3069(1)** states: NOTICE OF ADJUSTMENT OF FEDERAL OR STATE TAX LIABILITY. (1) Upon final determination of any deficiency or refund of federal taxes, the taxpayer is required to send written notice to the state tax commission within one hundred twenty (120) days of the final determination.

⁴ **Idaho Code section 63-3046. Penalties and additions to the tax in case of deficiency.** states in part: (a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

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

DATED this _____ day of _____ 2020.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2020, 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.

[REDACTED]