

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

██████████ (██████████) ██████████
██████████

Petitioners.

)
) DOCKET NO. 0-231-531-520
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)
)

DECISION
)

The Intrastate Income Tax Audit Bureau (Bureau) sent ██████████ (██████████) (██████████) (██████████) (██████████) (Petitioners) a Notice of Deficiency Determination (Notice) for tax years 2021 and 2022. Petitioners protested, disagreeing with the removal of their Idaho Net Operating Losses (NOL). The Tax Commission has reviewed the matter and hereby upholds the Notice issued by the Bureau.

BACKGROUND

Petitioners moved to Idaho in 2019, filing a part-year Idaho return. For tax years 2021 and 2022, Petitioners filed resident Idaho income tax returns, claiming an Idaho NOL flowed through from their federal returns. The Bureau reviewed their 2021 and 2022 Idaho returns, and determined the Idaho NOL was not derived from Idaho sources. The Bureau then sent Petitioners a Notice removing their Idaho NOL and adding interest and penalties. Petitioners protested, providing more context for the NOL claimed. Petitioners were affected by the ██████████ wildfire in 2018, which caused them to have a federal NOL. They lost everything in the fire and were part of a lawsuit related to the ██████████ ██████████ ██████████

Petitioners argue that since the losses in 2021 and 2022 were not used to reduce their Idaho tax liability in previous years, these amounts should not be taxed as income, as they did not receive any prior tax benefit from them. In their protest, they acknowledged that even if the law was not

on their side, that penalties should be removed due to the substantial losses they suffered in the fire.

The Bureau acknowledged Petitioners' protest and transferred the case to the Tax Commission's Appeals Unit (Appeals). Appeals contacted Petitioners to inform them of the appeals process and their right to a hearing. Petitioners did not request a hearing, but continued to insist the penalties should be removed. No additional information was provided.

LAW AND ANALYSIS

Idaho recognizes Federal NOLs but requires taxpayers to add certain amounts to their Idaho return according to Idaho Code section 63-3021. Specifically, Idaho Code section 63-3021(b) requires taxpayers to add (**Emphasis added**):

- (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.**
- (5) Any deduction allowed under section 199A of the Internal Revenue Code (relating to the deduction for qualified business income).
- (c) Subject to the provisions of sections 381 and 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation will survive a merger.
 - (1) Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity of business requirements.
 - (2) If the premerger corporation conducted operations in Idaho and at least one (1) other state, the section 382, Internal Revenue Code, loss limitation is limited further by the premerger loss corporation's Idaho apportionment factor for the last taxable year preceding the date of the merger.

Petitioners suffered the casualty loss outside of Idaho, which requires them to add back any Federal NOL claimed derived from that loss. Petitioners appear to understand the statute requires them to add back the losses, but claim that the statute is unfair and biased towards people who move to Idaho with a previous Federal NOL.

Regarding the addition of the negligence penalty, Idaho Code section 63-3046(a) states:

“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.”

The Tax Commission does not believe that Petitioners intended to defraud. However, it does appear the error was due to the disregard of the rules. Removal of penalties because a taxpayer believes the statutes are unfair is not a sufficient reason for removal. Therefore, the Tax Commission finds the Bureau applied the negligence penalty reasonably and correctly according to the statute cited previously.

CONCLUSION

Petitioners failed to add back their Federal NOL on their 2021 and 2022 Idaho returns that were derived outside of Idaho. Petitioners understand the returns are in error but requested removal of penalties. The Tax Commission has reviewed all the information available and finds all adjustments made by the Bureau, including the penalties, are accurate and reasonable according to the current statutes and rules.

The Bureau also added interest to Petitioners' tax deficiency. The Tax Commission reviewed this addition and finds it to be appropriate and in accordance with Idaho Code section 63-3045.

THEREFORE, the Notice of Deficiency sent to [REDACTED] ([REDACTED] [REDACTED] [REDACTED] [REDACTED] on June 18, 2024, is hereby AFFIRMED.

IT IS ORDERED that Petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2021	\$1,505	\$75	\$165	\$1,745
2022	6,983	349	517	<u>7,849</u>
			TOTAL:	\$9,594

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

DATED this _____ day of _____ 2024.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2024,
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:

Receipt No.

[REDACTED]

[REDACTED]