

LAW AND ANALYSIS

Internal Revenue Code (IRC) section 1368 states in pertinent part that distributions in excess of basis from S-Corps are treated as a sale or exchange of property, the gain from which is reported as capital gain income. If a shareholder has no basis for the tax year and receives a distribution from an S-Corp, the distribution is a distribution in excess of basis and must be included in the shareholder's income. An S-Corp's basis is determined by the rules of IRC section 1367 which takes into account the shareholder's pro rata share of the corporation's items of income, loss, deduction, or credit, and nonseparately computed income or loss. Generally, a shareholder's basis is tracked by the entity and should be tracked by the shareholder.

In the present case, the representative argued that the Bureau incorrectly calculated Petitioners' basis but he did not provide an alternative calculation of the shareholders' basis. As the Tax Commission determined in its decision, Docket No. 0-037-753-856, Petitioners' personal expenses deducted by the S-Corp in its general ledger were distributions to shareholders. The Tax Commission also determined that Petitioners' withdrawals from the S-Corp were distributions to shareholders unless otherwise determined that they were loans to shareholders. Since Petitioners had no basis for tax years 2021 and 2022, these distributions were distributions in excess of basis. The Tax Commission found that the Bureau's adjustments, increasing Petitioners' income by the amount determined to be distributions, were appropriate. However, the Tax Commission modified the Notice as it relates to loans to Petitioners. See Docket Number 0-037-753-856.

As a result of the adjustments addressed in Docket No. 0-037-753-856, the representative requested the Tax Commission allow the Idaho child tax credit for Petitioners' four children who are under the age of 17. Petitioners did not claim the credits on their original Idaho returns as they reported Idaho losses for each year resulting in zero taxable income. However, the audit

adjustments shown in the Notice created taxable income; therefore, the representative argued that Petitioners are entitled to the credits. The Tax Commission agrees and modifies the Notice to allow the Idaho child tax credits².

CONCLUSION

The Tax Commission modifies Petitioners' Notice as it modified the S-Corp's Notice in its decision on Docket No. 0-037-753-856 and further modifies the Notice to allow the Idaho Child tax credits.

The Bureau added interest and penalties to Petitioners' Idaho tax due. The Tax Commission reviewed those additions and found them in accordance with Idaho Code sections 63-3045 and 63-3046.

THEREFORE, the Tax Commission MODIFIES the Notice dated September 6, 2024, directed to Petitioners.

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	\$25,722	\$3,858	\$2,455	\$32,035
2022	20,198	3,030	1,202	24,430
TOTAL DUE				<u>\$56,465</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

² \$205 for each qualifying child who is under the age of 17. Petitioners had four qualifying children for both years.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2025,
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]