

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-817-548-800
	)	
,	)	
	)	
Petitioner.	)	DECISION
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(Petitioner) protested the Notice of Deficiency Determination dated November 27, 2020. The Income Tax Audit Bureau (Bureau) determined Petitioner could not carryover a net operating loss from tax year 2012 into tax years 2016, 2017, and 2018. Petitioner disagreed stating that it was a unitary business and as such the loss should be apportioned to Idaho. The Tax Commission having reviewed the case found that Petitioner did not transact business in Idaho until ; therefore, the net operating loss carryover from 2012 is not allowed on Petitioner’s Idaho income tax return. As a result, the Tax Commission upholds the Notice of Deficiency Determination. Since Petitioner is a simple trust and all income and losses are distributed to its beneficiary, Petitioner’s beneficiary is assessed the additional tax, penalty, and interest.

**BACKGROUND**

Petitioner filed Idaho fiduciary income tax returns for tax years 2015, 2016, 2017, and 2018. Petitioner filed its returns as a . Petitioner is the sole member of several that flow their income through to Petitioner. Because Petitioner is the only member of the , the are considered disregarded entities for tax purposes. Petitioner purchased a in Idaho in 2014 that it later transferred to one of the , in 2015. operates in other states as well as Idaho. Petitioner began reporting its income to Idaho from on its 2015

fiduciary income tax return. Petitioner's 2015 Idaho income tax return reported substantial Idaho source income.

On April 2, 2018, the Tax Commission received an amended 2015 individual income tax return from Petitioner's . amended their Idaho return eliminating all income from Petitioner. stated Petitioner's Schedule K-1 sent to was incorrect and that it had since been amended to show the correct amount of income derived from Idaho sources.

Petitioner did not file a 2015 amended Idaho return. was asked to provide a copy of Petitioner's amended return, which they did. Petitioner's amended return showed a proportioned net operating loss carryforward that eliminated the income previously reported to Idaho. Since Petitioner did not file an amended return, the matter was referred to the Bureau to review the net operating loss carryforward. The Bureau sent Petitioner a letter asking about the net operating loss.

Petitioner responded stating that its original return did not apportion its income/ losses to Idaho. Petitioner stated because it is with income and losses from , one of which transacts business in Idaho, it is required to apportion its income or loss to Idaho. The amended return and subsequent years' filings correctly apportioned its income/loss to Idaho.

The Bureau determined more information was needed, so it sent Petitioner another letter asking for additional information. Included in the Bureau's requests the Bureau asked where the Idaho net operating loss carryforward claimed in 2015 came from.

Petitioner responded to the Bureau's questions and provided the documentation requested. Regarding the net operating loss carryforward, Petitioner stated there was no Idaho net operating loss prior to 2015.

The Bureau reviewed Petitioner's responses and documentation. The Bureau asked Petitioner for more information, which it also provided. Upon review of that information the Bureau determined Petitioner could not claim the net operating loss carryforward because the loss was not an Idaho loss and the loss occurred before Petitioner began business operations in Idaho. The Bureau adjusted Petitioner's 2016, 2017, and 2018 returns and sent it a Notice of Deficiency Determination. The Bureau did not adjust Petitioner's 2015 amended return because the return was not processed and considered rejected. Since Petitioner is a \_\_\_\_\_, all income is \_\_\_\_\_. In this case Petitioner has \_\_\_\_\_, so the Bureau adjusted Beneficiary's Idaho income tax returns and sent them a Notice of Deficiency Determination too.

Petitioner protested the Bureau's determination. Petitioner stated its business operations constitute a unitary business and since Idaho allows unitary businesses to file as a combined group it should be allowed to apportion the group's loss. Petitioner stated it is undisputed that income from the unitary group meets the Idaho definition of business income; therefore, any related loss should be apportioned the same as income. Petitioner stated that since it is the single owner of the unitary group, the net loss from the unitary group is passed to it and then apportioned to Idaho accordingly. Petitioner stated that after applying Idaho's apportionment factor to the loss for tax year 2015, there is a 2015 Idaho net operating loss which can be carried forward to 2016.

The Bureau acknowledged Petitioner's protest and sent the matter to the Tax Commission's Appeals Unit (Appeals). Appeals reviewed Petitioner's case and sent it a letter asking how it wanted to proceed with the protest. Petitioner requested a telephone hearing which was held on June 29, 2021. During the hearing Petitioner provided a brief history of its business activity and how it came to where it is now. Petitioner stated the business started in \_\_\_\_\_ in \_\_\_\_\_ and has grown to an \_\_\_\_\_. Petitioner stated it began



Idaho Code section 63-3022(c)(4) states that \_\_\_\_\_, net operating losses incurred in activities not taxable by Idaho cannot be subtracted. Petitioners' net operating loss carryforward was incurred in a year, 2012, when Petitioner had no activities in Idaho and therefore not taxable by Idaho. Petitioner did not give any specifics about which entity incurred the net operating loss, but regardless Petitioner incurred the loss before it started transacting business in Idaho. Therefore, the net operating loss carryforward is not allowed on Petitioner's Idaho income tax return.

Petitioner argued that all its business entities are unitary; that they all rely on each other. Unitary is a corporate concept. In Idaho, Petitioner,

. See Idaho Code sections 63-3024, 63-3026, and 63-3026A. Individuals, \_\_\_\_\_, are taxed based on their resident status and where their income is sourced. Because each \_\_\_\_\_, the income \_\_\_\_\_ is viewed like a \_\_\_\_\_. Therefore, each \_\_\_\_\_ must report its Idaho income according to its business operations, if solely Idaho, all Idaho, if multistate, apportioned income. In this case, a \_\_\_\_\_ that has multistate activities in Idaho must apportion that income and only that \_\_\_\_\_ income.

Nevertheless, the issue in this case is a net operating loss that Petitioner sustained prior to transacting business in Idaho. As stated, Idaho law does not allow losses from business activities when the business was not transacting business in Idaho or when a nonresident has a carryover loss from sources that were not taxable by Idaho.

### **CONCLUSION**

Petitioner claimed a net operating loss carryforward from a tax year in which it had no business connection or presence in Idaho. The statute is clear, "[N]et operating losses incurred by

a person, other than a corporation, in activities not taxable by Idaho may not be subtracted.” Idaho Code section 63-3022(c)(4). Petitioner cannot claim the net operating loss carryforward from tax year 2012.

THEREFORE, the Notice of Deficiency Determination dated November 27, 2020, and directed to \_\_\_\_\_ is AFFIRMED.

Since Petitioner is a \_\_\_\_\_,

. Therefore, no demand or order for payment is necessary.

An explanation of Petitioner’s right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2021,  
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.

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