

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14596
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On February 22, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission (Bureau) issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional individual income tax, penalty, and interest in the amount of \$537 for the year ending December 31, 1995.

The taxpayers filed a timely appeal and petition for redetermination. They did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

Idaho Code § 63-3002 provides:

Declaration of intent. 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; . . .

The intent of the Idaho Legislature is to follow the federal determination subject only to modifications contained in Idaho law. [Redacted]. [Redacted]. Because that change resulted in additional income taxes, the Bureau issued a Notice of Deficiency Determination, which the taxpayers appealed.

[Redacted] explained that she had been having an ongoing struggle with the IRS over her right to claim her two children as dependents. She said she would concede the exemption of one of

the children but could not agree with the denial of her daughter as a dependent. On September 7, 2000, the taxpayers mailed a copy of the amended federal determination of the taxpayers' taxable income for the periods of 1995, 1996, and 1997 to the Bureau. The IRS allowed the taxpayers to claim one of the dependents.

The Bureau responded by letter wherein the taxpayers were offered an opportunity to withdraw their protest and pay an amended amount or continue with the appeal. When the Bureau received no response, the taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review. The taxpayers did not respond to a letter from the Legal/Tax Policy Division that outlined their appeal rights.

Pursuant to Idaho Code, the Tax Commission has chosen to follow the federal determination of income subject only to modifications in Idaho law. The Tax Commission has received no evidence that would dispute the results of the IRS's amended audit figures.

Based upon the information in the file and the applicable law, the Tax Commission finds the Notice of Deficiency Determination should be adjusted to agree with the final federal determination of the number of qualified dependents for 1995.

In the letter protesting the deficiency determination, [Redacted] questioned whether the penalty and interest charges were appropriate during a time when they were trying to persuade the IRS to allow them the exemptions.

The Idaho Supreme Court heard Union Pac. R.R. v. State Tax Comm'n, 105 Idaho 471, 670 P.2d 878 (1983). In this case there was a substantial delay in resolving the taxpayer's liability. In addressing whether the taxpayer was required to pay interest, the Court stated:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree

with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute.

Interest imposed under Idaho Code § 63-3045 is a mandatory charge. The charge is calculated from the due date of the return at a rate that is established by the legislature each year. Interest charged in the Notice of Deficiency Determination (a lesser amount resulting from the reduction in the tax) must be affirmed.

Idaho Code § 63-3046(c) provided:

(c) In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns. (Emphasis added.)

The Bureau properly imposed the delinquency penalty as provided by Idaho law. However, given the circumstances, the Tax Commission modifies the decision to reflect abatement of the penalties.

WHEREFORE, the Notice of Deficiency Determination dated February 22, 2000, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest for 1995:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$189	\$-0-	\$74	\$263

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

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

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2001, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

ADMINISTRATIVE ASSISTANT 1