

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 15616
[Redacted],	)	
	)	DECISION
Petitioners.	)	
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On May 15, 2001, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional individual income tax, penalty, and interest in the amount of \$7,761 for the year ending December 31, 1997.

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]. Because the audit resulted in additional income taxes, the Bureau issued a Notice of Deficiency Determination, which the taxpayers appealed. 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. [Redacted].

In their letter of protest, the taxpayers did not dispute the audit findings. Rather, they asked for consideration concerning the application of the penalty and interest. They explained that, during the period the federal audit was taking place, their lives were in turmoil because of the illness and death of their son. Furthermore, they said the IRS did not tell them they needed to advise the state of Idaho of the IRS's determination of additional income taxes due.

The Idaho Supreme Court heard Union Pacific Railroad Company v. State Tax Commission, 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 must be upheld.

The Bureau asserted a negligence penalty pursuant to Idaho Code § 63-3046, which provides for a penalty to be assessed, collected, and paid for negligence or disregard of rules without the intent to defraud.

Idaho law requires a taxpayer to notify the Tax Commission of any changes by the IRS that

adjusts the income tax due. In addition, the IRS did advise the taxpayer they should notify their state of residency of the changes made to their tax due. The notification was a part of the first page of the taxpayers' notice of deficiency from the IRS.

The Bureau properly imposed the delinquency penalty as provided by Idaho law. However, Idaho Code § 63-3047 allows the Tax Commission to compromise penalty: "The state tax commission or its delegate may compromise any penalty arising under the provisions of this act instead of commencing suit thereon . . ."

Therefore, because of the circumstances in the taxpayers' lives during the year in question and the subsequent audit, the Tax Commission modifies the deficiency determination to reflect a compromise of the penalty.

WHEREFORE, the Notice of Deficiency Determination dated May 15, 2001, 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 1997:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$5,968.00	\$0	\$1,418.30	\$7,386.30
		Payment Received	( 7,386.30)
		TOTAL DUE	<u>\$_____0</u>

The taxpayers have fully paid the total tax and interest. Therefore, no demand for payment is made.

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**

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