

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

In the Matter of the Protest of	)	
	)	DOCKET NOS. 15617 & 15618
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On March 23, 2001, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission issued two separate Notices of Deficiency Determinations to [Redacted] (taxpayers), proposing additional individual income tax, penalty, and interest in the amount of \$666 for the year ending December 31, 1996; and tax and interest in the total amount of \$1,873 for years ending December 31, 1997, 1998, and 1999.

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.

During a routine audit of an Idaho S corporation, the Bureau determined the taxpayers, residents of Wyoming, had not reported the income they received from the corporation to Idaho. The Bureau contacted the taxpayers, and they submitted the missing Idaho nonresident income tax returns. The Bureau reviewed those returns and issued deficiency notices. The taxpayers responded by sending a letter appealing the determination of penalty and interest. They said they had been unaware of the Idaho filing requirements but had filed the returns as soon as possible after the Bureau contacted them. They reiterated their position that their failure to file the proper returns was not intentional disregard of Idaho's laws.

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.

The taxpayers did not object to the tax amounts shown in the notices. They requested abatement of the penalty and interest because they were unaware of the Idaho filing requirement for persons receiving income from a S corporation. They said they filed the appropriate returns as soon as they became aware of the need to file. They further explained that the failure to file the returns was not due to intentional disregard of Idaho laws.

The Idaho Supreme Court heard Union Pacific R. Co. 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 Notices of Deficiency Determinations 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 \$106 penalty shown in the deficiency determination for 1996, which was the only year that penalty was imposed.

WHEREFORE, the Notices of Deficiency Determinations dated March 23, 2001, are hereby MODIFIED and, as so modified, are APPROVED, AFFIRMED, AND MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	\$422	\$0	\$147	\$ 569
1997	629	0	164	793
1998	422	0	77	499
1999	554	0	61	<u>615</u>
			TOTAL	<u>\$2,476</u>

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**

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