

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 16571
[Redacted])
)
) Petitioners.) DECISION
)
)
_____)

On December 7, 2001, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for tax years 1998 and 1999.

The taxpayers filed a timely protest. They did not request a hearing but did submit additional information. The Tax Commission, having reviewed the file, hereby issues its decision based on the file.

TDB identified the taxpayers as Idaho residents who did not file 1998 and 1999 Idaho income tax returns even though they received income in excess of the filing requirement. TDB sent the taxpayers a letter of inquiry regarding the two missing returns. The taxpayers wrote back that they were not sure if they had filed because they could not find copies of their returns. They said, during both years, they were married with three dependent children.

TDB prepared provisional Idaho income tax returns for 1998 and 1999 based on federal income information and the personal information provided by the taxpayers. TDB sent the provisional returns to the taxpayers for their signatures. When the taxpayers did not sign and return those Idaho returns, TDB issued them a Notice of Deficiency Determination. The taxpayers appealed the determination.

The taxpayers' protest letter advised that they could not find any income records for tax year 1998 (they had been burglarized and records were stolen); so they would not dispute the findings for that year. However, for tax year 1999, they found W-2s to substantiate additional withholding and

verification of day care expenses for the last half of 1999. Copies of those documents were enclosed.

The taxpayers asked the Bureau: "Please redetermine our taxes for 1999, we request to be forgiven [sic] of this tax liability. I have heard of this happening in certain situations, at the very least consider waiving the interest and penalties which are currently \$2,667 or 30% of your original determination."

TDB responded to the taxpayers' protest by sending the taxpayers an acknowledgement of their appeal and a revised Notice of Deficiency Determination. The taxpayers were given the opportunity to continue their appeal or withdraw their protest and accept the adjusted figures. When they did not answer that letter, their file was transferred to the Legal/Tax Policy Division for administrative review. A letter advising the taxpayers of their appeal rights was sent, but no response was received.

The taxpayers do not deny they had a requirement to file Idaho individual income tax returns for both 1998 and 1999. They have not filed those returns. The taxpayers have not disputed the amounts shown in the modified deficiency determination. Rather, they have asked the Tax Commission to abate their tax responsibility and/or forget the penalty and interest resulting from the failure to pay their 1998 and 1999 Idaho income tax.

In Union Pac. R.R. v. State Tax Com'n, 105 Idaho 471, 670 P.2d 878 (1983), 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.

The Bureau properly imposed the delinquency penalty as provided by Idaho law.

The taxpayers stated that they had heard of the Tax Commission forgiving a taxpayer's entire liability and asked the Tax Commission to grant them the same consideration. Idaho Code §§ 63-3047 and 63-3048 provide for agreement to compromise or adjust a liability. The grounds for such a settlement are provided by IDAPA 35.02.01 Rule 500:

500.ADJUSTED OR COMPROMISED CASES -- CLOSING AGREEMENTS

(Rule 500). Sections 63-3047 and 63-3048, Idaho Code.

01. Grounds for Compromise. The Tax Commission may compromise the tax liability, penalties, or both, of a case if one or more of the following circumstances exist:

- a. Doubt as to liability;
- b. Doubt as to collectibility; or
- c. Extreme hardship of the taxpayer.

No evidence has been submitted to suggest the taxpayers' Idaho income tax liability for 1998 or 1999 meets any of the circumstances required for the liability to be considered for adjustment or compromise. The Tax Commission upholds TDB's amended determination.

WHEREFORE, the Notice of Deficiency Determination dated March 25, 2002, 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, penalty, and interest for 1998 and 1999:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$1,361	\$340	\$365	\$2,066
1999	3,286	822	642	<u>4,750</u>
			TOTAL	<u>\$6,816</u>

Interest is calculated through November 15, 2002.

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 _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2002, 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] Receipt No. [Redacted]
[Redacted] [Redacted]