



Determination. The taxpayers appealed the determination.

The taxpayers' protest letter advised that, after the filing requirements were explained to them, they did not disagree with the revised tax amount, but they highly disagreed with the assertion of penalty and interest. They argued that they should not be required to pay penalty and interest on a balance that they were not even aware existed.

TDB responded to the taxpayers' protest by sending the taxpayers an acknowledgement of their appeal. The taxpayers were given an opportunity to continue their appeal or withdraw their protest and accept 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.

On November 1, 2002, during a telephone conversation with the Tax Appeals Specialist, [Redacted] confirmed that, after the 1998 tax due is adjusted to reflect the additional exemption and the credit for taxes paid to California, the only remaining issue is the penalty and interest.

The taxpayers do not deny they had a requirement to file Idaho individual income tax returns for both 1997 and 1998. They have not filed those returns. The taxpayers do not dispute the modified tax amounts. Rather, they have asked the Tax Commission to forgive the penalty and interest resulting from the failure to pay their 1997 and 1998 Idaho income tax in a timely manner.

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. (Emphasis added.)

Although the Bureau properly imposed the delinquency penalty as provided by Idaho law, the Tax Commission will abate the penalty portion of the adjusted determination.

WHEREFORE, the Notice of Deficiency Determination dated May 21, 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:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
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1997	\$1,069	\$-0-	\$386	\$1,455
1998	787	-0-	222	<u>1,009</u>
			TOTAL DUE	<u>\$2,464</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]

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