

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17002
[Redacted],)	
)	DECISION
Petitioners.)	
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)	

On November 20, 2002, the Central Collections Department of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable years 1996, 1998, and 1999 in the total amount of \$1,683.91. The same notice denied the taxpayers the following refunds: \$328.29 for 1994, \$476.61 for 1995, and \$482 for 1997.

The taxpayers filed a timely protest. Two telephone conferences were held and an amended 1999 Idaho return was submitted. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

During the years in question, the taxpayers failed to file Idaho individual income tax returns even though they satisfied the filing requirements stated in Idaho Code § 63-3030. The Tax Commission's Tax Discovery Bureau contacted the taxpayers and asked the taxpayers to file their missing returns. After many contacts (including sending a Notice of Deficiency Determination) and many delays, the taxpayers submitted their delinquent Idaho returns: 1994 through 1996 on November 5, 2001; 1997 and 1998 on January 11, 2002; and 1999 on February 19, 2002. The taxpayers' 2000 Idaho return was received on February 26, 2002 and a \$20 refund was issued for that year.

The taxpayers' 1994, 1995, and 1997 returns showed refunds that were carried forward as credits year after year. Because the Idaho Income Tax Code requires credits and refunds to be claimed within a certain time frame, a letter addressing each return was sent to the taxpayers to notify them of the error. The taxpayers objected and a Notice of Deficiency Determination was sent.

Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency -- Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

The taxpayers appealed the determination in a letter that was signed by [Redacted]. The letter said taxpayers should be able to claim refunds for any year the state requires a return to be filed, and payments should apply to tax before penalty and interest. [Redacted] said the taxpayers were claiming Form 51 estimated taxes and payments – not refunds that had been carried forward. [Redacted] advised that the taxpayers would amend their 1999 return.

The taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review. The taxpayers were sent a letter to advise them of their appeal rights and to explain in greater detail the changes that had been made to the taxpayers' returns. A copy of the Idaho Income Tax Code sections that supported the corrections was included.

Idaho Code § 63-3035(e) limits the time for an employee to claim a credit or refund of monies that have been deducted from wages as follows:

Idaho Code § 63-3035 . . .(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this act, the state tax commission shall, after examining the annual return filed by the employee in accordance with this act, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be made to an employee who fails to file his return, as required under this act, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited.** In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)

Idaho Code 63-3072(c) provides for a limit on the time to claim a refund of overpaid income taxes:

Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid **shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed.** (Emphasis added.)

The period of limitation with respect to claiming a refund or credit of taxes shown in the taxpayers' Idaho income tax return for 1994 expired on April 15, 1998; 1995 expired on April 15, 1999; and 1997 expired on April 15, 2001. The first claim for refund or credit for any of the withheld income taxes was not made until November 5, 2001.

During the conferences, [Redacted] expanded on his belief that it would be unfair to not allow credits or refunds for some years and expect tax payments for other years. He said it would

make no sense and not be right to enforce such a thing when the state had his money all the time in the form of withholding.

Idaho Code § 63-3032 provides a time for taxpayers to file their Idaho tax returns each year. Taxpayers on a calendar year filing cycle are required to file their Idaho returns on or before the 15th day of April the year following the year of the return. The taxpayers did not file any of the returns at issue within the time frame required by law.

One might feel that the statutory treatment is unfair or otherwise unreasonable. The Idaho Supreme Court has addressed such circumstances. The Court stated, in part:

[3][4][5][6] Taxpayer urges that ambiguous language of the statute should be so construed as to avoid socially undesirable or oppressive results. It may be agreed, where legislative language is ambiguous, and other rules of statutory construction do not control, the court should consider social and economic results. But in the instance we do not find the statutes involved to be ambiguous; no exemption is granted and the legislative intent is to impose a tax on residents of this state measured by taxable income wherever derived. In such case our duty is clear. We must follow the law as written. If it is socially or economically unsound, the power to correct it is legislative, not judicial. John Hancock Mutual Life Insurance Co. v. Neill 79 Idaho 385, 319 P2d 195 (1957). (Emphasis added.)

Herndon v. West, 87 Idaho 335, 339 (1964).

The refunds shown in the returns prepared and submitted by the taxpayers for the years 1994, 1995, and 1997 are denied and will not be allowed to apply as credits to any other years.

The taxpayers questioned the changes to their 1999 return; but [Redacted] conceded the issue of an error in the return by filing an amended return that showed the same figure of taxable social security as Central Collections had shown. The issue of the \$19 credit from the taxpayers' 1998 return, which was the result of claiming the credit for the refund shown in the taxpayers' 1997

return, was not conceded. The taxpayers' amended 1999 return showed the \$19 as a credit against the tax owing for 1999. That credit will not be allowed.

The taxpayers questioned the application of partial payments. Partial payments are applied to a taxpayer's liability pursuant to Idaho Tax Commission Administration and Enforcement Rules IDAPA 35.02.01. Rule 140 states:

APPLICATION OF PARTIAL PAYMENT (Rule 140).

- 01. In General.** If bad check charges, penalties, or interest accrue as a result of any deficiency in tax, partial payments shall apply in the following order: to bad check charges, interest, tax, and penalty.
- 02. Taxpayers With Multiple Tax Obligations.** If a taxpayer owes multiple tax obligations, the taxpayer may direct how the Tax Commission will apply payments not made with a tax return. Such directions shall apply to tax types or tax years.

Any partial payments the taxpayers submit will be applied according to the general rule unless the taxpayers make their wishes known for something different. The taxpayers can include directions for the application of a payment when the payment is delivered to the Tax Commission.

During the telephone conferences, [Redacted] requested the Tax Commission to waive penalty and interest at the very least.

The Idaho Supreme Court heard Union Pac. R.R. v. State Tax Com'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 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 November 20, 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>REFUND</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$-0-	\$-0-	\$-0-	\$ -0-	\$ -0-
1995	-0-	-0-	-0-	-0-	-0-
1996	-0-	395	-0-	181	576
1997	-0-	-0-	-0-	-0-	-0-
1998	-0-	463	-0-	136	599
1999	-0-	502	-0-	111	613
			LESS PAYMENT		<320>
			TOTAL		<u>\$1,468</u>

Interest is computed through April 15, 2003.

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

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

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2003, 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]

[Redacted]