

. . .
I am hopeful you that you [sic] can abate the penalty and interest due to these unwelcome and unfortunate circumstances.

In his letter protesting the NODD, the taxpayer questioned the amounts imposed and paid for penalty and interest. Review of the records and the returns the taxpayer submitted for filing identifies the total penalty and interest billed to and paid by the taxpayer.

When the taxpayer's preparer completed the taxpayer's returns for filing with the Tax Commission, he calculated and included in each return an amount for penalty and an amount for interest. However, when the Bureau ran the returns through the Tax Commission's computer system, the system did not accept the penalty and interest amounts shown in the returns. Rather the computer computed both amounts and sent a letter showing the total remaining unpaid. Neither the Bureau nor the computer addressed the penalty and interest amounts shown in the taxpayer's returns.

For tax year 2002, the taxpayer's return shows a penalty of \$932 and interest of \$211. The NODD penalty amount was \$23.65 and interest was \$216.69. For tax year 2003, the taxpayer's return shows a penalty of \$27 and interest of \$27. The NODD penalty amount was \$391.94 and interest was \$89.05. The computer calculations of penalty and interest using the Idaho Code and received dates total less than the total amount of penalty and interest the taxpayer's preparer calculated and entered in the returns as self-assessments.

Both years, the taxpayer made estimated payments prior to the due date of each return, made additional payments when each return was filed, and paid the balance that was billed to him immediately following the filing of each return. The total penalty and interest imposed for each year was calculated based on the received date of the payments and the returns.

Idaho Code § 63-3045(6) states:

(a) Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.

(b) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carryback of a net operating loss or a capital loss carryback, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss or capital loss arises.

(c) The rate of interest accruing during any calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the midterm federal rate as it applies on October 15 of the immediately preceding calendar year rounded to the nearest whole number.

The Idaho Supreme Court heard Union Pac. R.R. 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) and (g) provide for a delinquency penalty:

(c) (1) In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such return for each month elapsing after the due date (including extensions) of such returns until the return is filed.

(2) In the event the return required by this chapter is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of one-half percent (0.5%) of the tax due on such return for each month elapsing after the later of the due date of such return or the date the return was filed until the tax is paid.

...
(g) Total penalties imposed under subsections (a), (c) and (d) of this section and under section 63-3033, Idaho Code, shall not exceed twenty-five percent (25%) of the tax due on the return.

The taxpayer's 2002 Idaho individual income tax return was filed timely; however, the full amount of tax showing as due in that return was not paid until a later date. The late pay penalty of \$23.65 was appropriately imposed.

The taxpayer's 2003 Idaho individual income tax return was not submitted for filing until after the due date of the return. The late filing penalty of \$391.94 was appropriately imposed.

WHEREFORE, the Notices of Deficiency Determination dated September 21, 2004, are hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$12,109.00	\$ 23.65	\$216.09	\$12,348.74
2003	5,713.00	391.94	89.05	6,193.99
			PAYMENTS RECEIVED	<u><18,542.73></u>
			TOTAL DUE	\$ - 0

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2004, 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]
[REDACTED]

[Redacted]

[Redacted]

[REDACTED]