



that supported Taxpayer Accounting's explanation of, "If a part-year resident of Idaho files a resident return for another state and claims credit for taxes paid to Idaho, credit for taxes paid to that state will be disallowed on the Idaho return." The taxpayers also protested the interest charged on the deficiency.

The matter was referred for administrative review, and the Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers responded by telephone to the Tax Commission's letter. In that conversation, the taxpayers stated their income was being taxed by both Idaho and [Redacted]. Since their income was double taxed, they were entitled to a credit for taxes paid to the other state. The taxpayers stated there was nothing in the Idaho instructions that said part-year residents do not get the credit for taxes paid to another state.

Idaho Code section 63-3029 states, in pertinent parts,

**Credit for income taxes paid another state or territory.** -- (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.

...

(3) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other state as modified by this chapter bears to the adjusted gross income of the taxpayer as modified by this chapter. This limitation applies to all individuals whether the tax paid to the other state is paid by the individual or by an S corporation, partnership, limited liability company, or trust. Further, the credit shall not exceed the tax paid to the other state.

(4) To substantiate the credit allowed under this section, the state tax commission may require a copy of any receipt showing payment of income taxes to the other state or a copy of any return or returns filed with such other state, or both.

...

(6) The credit shall not be allowed if such other state allows a credit against taxes imposed by such state for taxes paid or payable under this act.

...

(9) A part-year resident is entitled to a credit, determined in the manner prescribed by the state tax commission, for income taxes paid to another state in regard to income which is:

- (a) Earned while the taxpayer is domiciled in this state; and
- (b) Subject to tax in such other state.

In August 2003, Mr. [Redacted] obtained employment in Idaho. Prior to this time, the taxpayers were both residents of [Redacted]. In fact, Mrs. [Redacted] remained in [Redacted] until sometime in 2004. In addition to filing an Idaho income tax return for 2003, the taxpayers filed a resident [Redacted] income tax return. The taxpayers claimed a credit for taxes paid to another state on both their Idaho and [Redacted] income tax returns.

Idaho's credit for taxes paid to another state is for residents and part-year residents of Idaho that have income from sources in another state that is subject to tax in Idaho and the other state. (Idaho Code section 63-3029(1) and (9).) Idaho does not allow the credit if the other state gives a credit to the taxpayer. (Idaho Code section 63-3029(6).)

The taxpayers in this case could be viewed in two ways. One way is to view the taxpayers as both residents of [Redacted] for all of 2003, making Mr. [Redacted] a nonresident of Idaho for 2003. The second and most probable view is that Mr. [Redacted] abandoned [Redacted] as his state of domicile in August 2003 and acquired Idaho as his domicile, thus becoming a part-year resident of Idaho.

Mr. [Redacted] stated he was laid off from his job in [Redacted]. On August 11, 2003, Mr. [Redacted] began a job in Idaho that he believed was permanent employment. For the

remainder of 2003, Mr. [Redacted] lived in Idaho while his wife lived in [Redacted]. Mr. [Redacted] stated he only went back to [Redacted] for visits from August through December. Mrs. [Redacted] did not come to Idaho in 2003.

Idaho's credit for taxes paid to another state is intended to ease the burden of paying state income taxes on the same income to more than one state. However, in order to receive the credit, the income has to be subject to tax in both Idaho and the other state. In the scenario of the taxpayers being residents of [Redacted], Mr. [Redacted] Idaho source income would be subject to tax in both Idaho and [Redacted]. However, as [Redacted] residents, the taxpayers would, and in fact did, receive a credit from [Redacted]. As for the Idaho credit, first and foremost, nonresidents do not get the credit. Idaho Code section 63-3029 specifies that only residents and part-year residents can receive the credit. Secondly, if Idaho's credit were available to nonresidents, the credit would not be available to the taxpayers because they received a credit from [Redacted]. (Idaho Code section 63-3029(6).) Therefore, in this scenario, the taxpayers would not be allowed the Idaho credit.

In the second scenario, which the Tax Commission believes is the correct scenario, Mr. [Redacted] is a part-year resident of Idaho, domiciled in Idaho beginning in August 2003. Since Mr. [Redacted] left [Redacted] and acquired Idaho as his domicile, [Redacted] cannot tax the income from sources outside of [Redacted]. In this case, Mr. [Redacted] Idaho income is only subject to tax in Idaho. Therefore, the taxpayers have no income that is taxed by more than one state and the credit is not available.

As previously stated, the Tax Commission believes this case follows the facts and circumstances stated in the scenario of Mr. [Redacted] changing his domicile to Idaho in August 2003. The Tax Commission found that if the taxpayers were to report their income correctly to

Idaho and to [Redacted] they would have no income that was taxed by both states. Therefore, the Tax Commission upholds the adjustment Taxpayer Accounting made to disallow the credit for taxes paid to another state.

The taxpayers also protested the addition of interest to their tax deficiency. Idaho Code section 63-3045 states that interest shall be added to any tax deficiency. The Idaho Supreme Court echoed this in Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983),

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. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

When the taxpayers filed their Idaho return, the Tax Commission issued them the refund they claimed. The taxpayers have had use of that money, most of which should have remained with the Tax Commission. Accordingly, the Tax Commission finds the addition of interest proper and appropriate.

WHEREFORE, the Notice of Deficiency Determination dated September 10, 2004, is hereby 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>INTEREST</u>	<u>TOTAL</u>
2003	\$1,344	\$ 91	\$1,435

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]  
[Redacted]  
[Redacted]

Receipt No.

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