

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20706
[REDACTED],)	
)	DECISION
Petitioners.)	
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[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated August 21, 2007, asserting additional liability for Idaho income tax, penalty, and interest in the total amount of \$9,721 for 2005. This was composed of Idaho income tax in the amount of \$8,106, penalty in the amount of \$811, and interest in the amount of \$804.

The petitioners claimed an Idaho capital gains deduction in the amount of \$103,890. Upon further examination, the auditor found that the gain did not qualify for the Idaho capital gains deduction and adjusted their Idaho taxable income to reflect this change. In addition, the auditor asserted the substantial understatement penalty (10 percent) and interest to October 23, 2007.

The petitioners apparently concede that the gain in question did not qualify for the Idaho capital gains deduction. They paid the amount of \$8,910 and indicated that they did not feel that the penalty or interest should be asserted.

The interest was asserted by the auditor pursuant to Idaho Code § 63-3045(6)(b) which stated in part:

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 reviewing the application of interest to a deficiency for income tax, the Idaho Supreme Court stated the following:

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.

Union Pacific Railroad Company v. The State Tax Commission, 105 Idaho 471, 476 (1983).

Upon review, the Commission finds that the provision for the assertion of the interest is still mandatory rather than discretionary. Therefore, as to the application of the interest, the Commission affirms the auditor's position.

Provision for the penalty asserted was provided in Idaho Code § 63-3046 which state in part:

(d)(1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent (10%) of the amount of any underpayment attributable to such understatement.

(2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

(i) Ten percent (10%) of the tax required to be shown on the return for the taxable year, or (ii) Five thousand dollars (\$5,000).

* * *

(5) The amount of the understatement under paragraph (4) shall be reduced by that portion of the understatement which is attributable to:

(i) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

(ii) Any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

It appears that the understatement of tax on the petitioners' 2005 Idaho income tax return was understated by both \$5,000 and 10 percent of the tax. Idaho Code § 63-3046 provides that the understatement will be reduced by amounts for which there was substantial authority or amounts for which the relevant facts affecting the item's tax treatment are adequately disclosed. In the petitioners' Idaho income tax return, all that can be determined is that the gain in question was from a partnership, S Corporation, estate, or trust. Therefore, the underlying facts were not adequately disclosed. Also, the petitioners have cited no authority to support their position. Accordingly, the Commission finds that the substantial understatement penalty was properly asserted by the auditor.

WHEREFORE, the Notice of Deficiency Determination dated August 21, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER the petitioners to pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$8,106	\$ 811	\$ 804	\$ 9,721
			LESS PAYMENT	<u>8,910</u>
			TOTAL DUE	<u>\$ 811</u>

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

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

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, 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]

Receipt No.
