

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20914
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On December 14, 2007, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing additional income tax, penalty, and interest for the taxable year 2004 in the total amount of \$1,552.

On January 18, 2008, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer stated in his protest that he did not agree with interest being assessed and if the notice was about the taxpayer not paying taxes on his 401k he had to withdraw from the 401k because of a medical condition.

[Redacted].

The Bureau reviewed the changes [Redacted] and determined the taxpayer's Idaho income tax return should have been corrected as well. The Bureau adjusted the taxpayer's 2004 Idaho income tax return and sent him a Notice of Deficiency Determination. The taxpayer appealed the Bureau's determination and requested his file be forwarded to the Legal/ Tax Policy division for administrative review.

The Tax Commission sent the taxpayer a letter that explained the methods available for redetermining a Notice of Deficiency Determination. The taxpayer did not respond. The Tax Commission sent a follow-up letter to the taxpayer but still received no response from him. Therefore, the Tax Commission decided the matter based upon the information available.

Idaho Code § 63-3002 states in part:

It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . .

Therefore, if the IRS changed the taxpayer's federal taxable income to include additional income, a corresponding adjustment must be made to the taxpayer's Idaho income tax return to make Idaho taxable income identical to federal taxable income.

Idaho Code § 63-3045(6) states in part:

(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; the Tax Commission has no discretion in adding interest to the tax deficiency.

Therefore, the Tax Commission must uphold the Bureau's adjustment to the taxpayer's 2004 Idaho income tax return, and the interest charged in the Notice of Deficiency Determination must be affirmed.

The Bureau added interest and penalty to the taxpayer's tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code §§ 63-3045 and 63-3046, respectively.

WHEREFORE, the Notice of Deficiency Determination dated December 14, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$1,260	\$63	\$302	\$1,625

Interest is calculated through December 14, 2008.

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

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

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.
