

The petitioner agrees with the ABU's calculation of additional interest but not the additional penalty.¹ The petitioner argues that the ABU's penalty calculation does not take into consideration the federal extension that was filed for the petitioner. The petitioner believes it is only liable for one month of late filing penalty at 5 percent and six months of late payment penalties at .5 percent per month. The ABU maintains that the petitioner is liable for five months of late filing penalties at 5 percent per month; maximum of 25 percent. The difference between two approaches is illustrated as follows:

	Per Petitioner		Per ABU
	Late Filing Penalty	Late Payment Penalty	Late Filing Penalty
Tax	\$6,585	\$6,585	\$6,585
Penalty percentage	5.00%	0.50%	5.00%
Number of late months	1	6	5
Penalty amount	\$329	\$198	\$1,646.25
Penalty remitted	(196)	0	(196)
Amount owed	<u>\$133</u>	<u>\$198</u>	<u>\$1,450.25</u>

On the Idaho Form 66 as originally filed, the petitioner calculated its penalty to be \$196; however, in its letter dated July 22, 2007, the petitioner now believes its penalty to be the \$527 (\$329 + \$198) as shown above.

The petitioner has a tax year ending January 31, 2007. The original due date for filing and payment of tax due was May 15, 2007. The petitioner's extended due date, if applicable, for filing the return was November 15, 2007. The date the return was filed was November 30, 2007, approximately 15 days past any extended due date and more than six months past the original due date.

¹ See schedule dated July 24, 2008, attached to the petitioner's letter dated July 22, 2008.

Idaho's extension of time to file a return is governed by Idaho Code section 63-3033

which states, in pertinent part:

63-3033. Extension of time. (a) Taxpayers shall have an automatic extension of time for filing any return, . . . required by this chapter for a period of six (6) months if on or before the unextended due date the taxpayer has paid at least eighty percent (80%) of the total tax due on the income tax return when it is filed, or the total tax due on the income tax return for the prior year if a return was filed for the prior year.

(b) If, on the unextended due date, the payment required to meet the provisions of subsection (a) of this section, after consideration of any previous credits or payments applicable to the return, is fifty dollars (\$50.00) or less, such payment shall not be required in order to qualify for the extension. However, interest shall accrue as provided in subsection (f) of this section. Payment of any balance of tax is due on the earlier of the extended due date or the date the return is filed.

...

(f) If the amount of payment made under subsection (a) of this section is less than eighty percent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax due on the income tax return for the prior year, except as permitted by subsection (b) of this section, a penalty may be applied to the total of the balance due unless reasonable cause can be established. The penalty shall be:

(1) If the taxes for the taxable year are paid on or before the extended due date, two percent (2%) per month from the original due date to the date of payment.

(2) If the taxes for the taxable year are not paid on or before the extended due date, the penalty provided in section 63-3046(c), Idaho Code, from the original due date.

Idaho Code section 63-3046(c) states, in pertinent part:

63-3046. Penalties and additions to the tax in case of deficiency. . . .

(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 returns 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.

Since the petitioner paid all of the tax due with the filing of the return beyond the extended due date, the extension provisions found in Idaho Code section 63-3033 are inapplicable, thus the ABU was correct in calculating the penalty in accordance with Idaho Code section 63-3046(c)(1) at 5 percent per month with a maximum of 25 percent starting from the original due date.

Even if Idaho Code section 63-3033 extension provisions were applicable, in the event that the extension criteria is not met, Idaho Income Tax Administrative and Enforcement Rule 400.03.d. states that if “the return is filed after the extended due date and the tax is paid after the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the due date of the return to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid.”

Since, Idaho Code section 63-3046(g) limits the type of penalties involved in this case to a maximum of 25 percent, the ABU was correct in applying a penalty of 25 percent.

WHEREFORE, the Notice of Deficiency Determination dated February 19, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
31-Jan-07		\$1,450.25	\$19.10	\$1,469.35
			TOTAL DUE	<u>\$1,469.35</u>

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

An explanation of the petitioner'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.
