

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21180
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On May 24, 2008, the Revenue Operations Division (Division) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The notice proposed a penalty in the amount of \$500 and interest in the amount of \$229.60 for the taxpayer’s failure to make its 2008 extension payment by an electronic transfer as required by Idaho Code § 67-2026. The taxpayer timely protested and requested a redetermination on May 30, 2008. An informal conference was not held. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

On May 14, 2008, the taxpayer paid its 2008 extension payment in the amount of \$140,000. The taxpayer made the payment by cashier’s check. The Tax Commission’s records indicate that the check was received on May 15, 2008. However, because the payment was not made by electronic funds transfer as required by Idaho Code § 67-2026, the Division imposed an additional interest charge and penalty as allowed by Idaho Code § 67-2026A. Idaho Code § 67-2026 provides in relevant part:

67-2026. Taxes, fees and other amounts to be paid by electronic funds transfer—Exception.—(1) Except as allowed in subsection (3) of this section, all taxes and additional amounts of interest, penalty or fees payable to the state must be paid by electronic funds transfer whenever the amount paid or payable is one hundred thousand dollars (\$100,000) or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday or legal holiday, the payment may be made on the first business day thereafter.

Subsection (3) excludes individuals from the electronic payment requirement even if the amount paid is greater than one hundred thousand dollars. Here, it is undisputed that the taxpayer's payment by certified check did not comply with Idaho Code § 63-2026. The consequence of failing to use the electronic fund transfer when required is governed by Idaho Code § 63-3026A, which provides in relevant part:

63-3026A. Failure to use electronic funds transfer.—(1) Any payor required under the provisions of section 67-2026, Idaho Code, to make a payment by electronic transfer who makes the payment by check or other nonelectronic means shall be liable for an additional amount of interest. The interest shall be calculated at the annual rate of twelve per cent (12%) simple interest for the period of time between the date the payment is due and the day the funds become available to the state treasurer for investment. Unless the payor establishes a contrary time, the time between receipt of a payment by means other than electronic funds transfer and the time the funds become available to the state treasurer for investment is presumed to be five (5) days.

If the agency administering the tax determines that a payor's failure to use electronic funds transfer when required is due to the payor's negligence or is the result of the payor's knowing disregard of the requirement, the agency may assert a penalty, in addition to the interest charged under subsection (1) of this section, of five hundred dollars (\$500). If the payor establishes that the failure is not due to his negligence or the result of his knowing disregard of the requirement, agency shall abate the penalty, but it shall not abate the interest due under subsection (1) of this section.

Thus, there are two issues raised by the taxpayer. It contends that it should not be responsible for interest, and it contends that it was not negligent nor did it intentionally disregard the statute and, therefore, the penalty should be abated. The taxpayer is correct with respect to interest, but the Tax Commission hereby determines the taxpayer is negligent because it had received actual notice of the requirement to make electronic funds payments and failed to comply with the statute.

With respect to interest, the statute imposes an additional interest charge calculated between the due date of the payment and the actual date the money becomes available for investment by the state treasurer. The extension payment is due on the 15th day of the fourth month following the end of the taxpayer's fiscal year. Here, the taxpayer's fiscal year ended on February 23, 2008, and the payment was received on May 15, 2008, well before its due date. Accordingly, the treasurer had the payment timely to make an investment. The Tax Commission hereby withdraws the interest portion of the Notice of Deficiency.

The taxpayer also contends it should not be responsible for the penalty. It argues that the instructions for Form 41ES, the form used in conjunction with its estimated payment, does not give any indication of a requirement to make payments electronically. The Tax Commission does not accept the argument that without such instructions on the form, a taxpayer is relieved of its statutory obligation to pay electronically. Certainly, the instructions are not inconsistent with the statute, and the failure to include such direction cannot relieve a taxpayer of its statutory obligation. However, in this case, the Division sent two letters along with brochures informing the taxpayer of its obligation to make payments electronically. On June 27, 2007, after receiving the taxpayer's quarterly tax payment in an amount greater than \$100,000, the Division sent a letter to the taxpayer advising it of its obligation to pay its tax electronically. The letter included the following statement "[y]ou may not be aware of the Idaho law that requires payments of \$100,000 or more to be made by electronic funds transfer. Enclosed is a pamphlet that explains your electronic payment options." The letter further advises the taxpayer to set up an electronic payment account. The Division did not issue a Notice of Deficiency for the \$500 penalty.

Despite this notice, the taxpayer did not pay its next quarterly installment by electronic funds transfer. Even though its payment was greater than \$100,000, it made the payment by

check. The Division did not issue a Notice of Deficiency for the penalty. However, it imposed an interest charge of \$492 and again instructed the taxpayer on its obligation to pay electronically. The Division sent the taxpayer the following letter on August 23, 2007:

Dear Taxpayer:

Idaho law requires businesses to make payments of \$100,000 or more by electronic funds transfer (EFT). Because you did not follow this law when you made an Idaho Business Income Tax payment for the period ending February 29, 2008, we are charging you interest in the amount of \$ 492.00.

We have enclosed a copy of your return, the law requiring payments by electronic funds transfer, and a brochure that explains how to make electronic payments.

Please send your interest payment in the enclosed envelope by September 6, 2007. If you do not pay by electronic funds transfer when required in the future, we may charge both interest and penalty.

If you have any questions or need more information about making electronic payments, call 334-7660 in the Boise calling area, or toll free (800) 972-7660 nationwide.

The taxpayer did pay the interest charge. Though the taxpayer argues that the instructions do not direct that payments in excess of \$100,000 must be made electronically, the taxpayer did receive two letters and a copy of a brochure addressing the requirement. Additionally, the taxpayer was told that if it did not make these payments electronically, a penalty could be imposed.

For these reasons, the Tax Commission believes the taxpayer was negligent in making its estimated payment by electronic means.

THEREFORE, the Notice of Deficiency Determination dated May 24, 2008, is hereby MODIFIED and as MODIFIED is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the penalty of \$500 related to its 2008 extension payment made on May 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.
