

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21274
[REDACTED])	
Petitioner.)	DECISION
)	
)	
)	

On May 24, 2008, the Initial Operations Section of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting penalty and interest for failure to pay its 2007 tax obligation electronically as required by Idaho Code § 67-2026. This statute requires tax payments in excess of \$100,000 to be made electronically except in cases where the taxpayer is an individual. The Notice, issued pursuant to Idaho Code § 63-2026A, asserted penalty in the amount of \$500 and interest in the amount of \$1,054.13. The taxpayer timely protested on July 7, 2008, and an informal conference was held on December 10, 2008. After considering the information in the file and the arguments of the taxpayer, the Tax Commission hereby issues its decision. The Commission holds the interest was improperly asserted but that the taxpayer is liable for the penalty.

The following facts are undisputed. On December 31, 2007, the taxpayer made an estimated payment in the amount of \$642,758. This payment was made by check from a third party, [Redacted]. However, Idaho Code § 67-2026 requires all payments to be made electronically, unless the payor is an individual. The taxpayer does not dispute that it did not satisfy the requirements of the statute.

The Initial Operations Section imposed a five-day interest charge and a penalty of \$500 pursuant to Idaho Code § 67-2026A. This statute provides:

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 day 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.

(2) 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, the agency shall abate the penalty, but it shall not abate the interest due under subsection (1) of this section.

(3) Amounts due under this section shall be asserted by the agency administering the tax in the same manner provided by law for a failure to pay taxes or fees due.

Subpart (1) of the statute allows the Commission to impose interest calculated from the due date of the payment to the date the funds become available to the state treasurer for investment. Here, the payment was made on December 31, 2007. However, the only statute that addresses tax payments by trusts is Idaho Code § 63-3034. It provides that the entire tax obligation shall be paid to the Commission on or before the due date of the return. The due date for filing a tax return is April 15. Accordingly, the taxpayer's due date for making the \$642,758 payment was April 15, 2008. Since the payment was received prior to April 15, the state treasurer was not denied the opportunity to use the funds for investment. In fact, the state

treasurer had the funds for two and one-half months before they were legally obligated to be paid. The Notice of Deficiency for interest is hereby withdrawn.

Subpart (2) of the statute allows the Commission to impose a penalty of \$500 when the taxpayer's failure to use electronic funds transfer is due to negligence or the knowing disregard of the electronic funds payment requirement. Here, the Initial Operations Section imposed the penalty because it had notified the taxpayer of its requirement to pay electronically in prior years. In January 2005, the staff sent the taxpayer a letter advising the taxpayer of this requirement after the taxpayer made an estimated payment against its 2004 liability in an amount in excess of \$100,000. In January of 2007, the staff issued a Notice of Deficiency to the taxpayer after the taxpayer made an estimated payment of \$322,832 for its 2006 liability. The Notice was withdrawn after the taxpayer sent a letter to the staff requesting abatement of the charge and that the taxpayer would in the future make all payments in excess of \$100,000 electronically. However, as noted in this decision, the taxpayer did not make its 2007 estimated tax payment electronically. There is sufficient evidence to support the staff's determination that the \$500 penalty should be imposed because the taxpayer knowingly disregarded the electronic funds payment requirement.

WHEREFORE, 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 \$500 penalty imposed pursuant to Idaho Code § 67-2026A.

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.
