

doing business in this state” (Idaho Code § 63 3611). Therefore, the burden is on the Taxpayer to remit use tax directly to the state. All states with a sales tax have a complementary use tax provision.

The following describes when use tax is due.

Returns and payments. (a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month.....

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe....

(e) For the purposes of the sales tax, the return shall show the total sales at retail subject to tax under this act during the reporting period. For the purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use, or consumption of which property became subject to the use tax during the reporting period; *in the case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use, or consumption of which became subject to the use tax during the reporting period...*(Idaho Code § 63-3623, in relevant part, emphasis added).

The Notice of Deficiency Determination included interest on the unpaid use tax. Various

Idaho tax code sections refer to the accrual of interest on unpaid tax liabilities:

When the tax commission determines that a retail sale is not exempt and the purchaser has failed to voluntarily pay sales or use tax in regard to the property or services purchased, the tax commission may collect the sales tax which was due at the time of the sale or the use tax due at the time of storage, use or other consumption of the taxable goods or services by issuing to the purchaser a notice of deficiency determination, asserting tax together with interest, at the rate provided in section 63-3045, Idaho Code, and may assert penalties found elsewhere in this chapter (Idaho Code § 63-3624(h)).

Interest on deficiencies. *Interest upon any deficiency shall be assessed at the same time as the deficiency and 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 provided in*

section 63-3045, Idaho Code, *from the date prescribed for the payment of the tax* (Idaho Code § 63-3632, emphasis added).

Thus, the tax code requires the Commission to apply interest at a specified rate from the date the tax was due. The use of the word “shall” in the preceding citations leaves no room for independent judgment or arbitrariness.

PROTEST ISSUES

The Taxpayer does not object to the tax. It does, however, believe that interest should accrue only from that point at which it was made aware of the use tax liability.

ANALYSIS AND CONCLUSIONS

The Taxpayer cites no statutory authority for its contention that interest should accrue only from that point when it became aware of a tax liability. Rather, it makes a plea that the retroactive imposition of interest for a tax he was not aware of is unfair.

In 1983, the Idaho Supreme Court affirmed the Commission’s obligation to both assess and collect interest in a decision against the Union Pacific Railroad Company’s appeal of a 1942 Idaho state income tax and accrued interest assessment. The court said, despite unique circumstances and its own ability to exercise equitable power, that absent statutory authority, it had no power to remit (i.e., abate) interest imposed by statute on a tax deficiency. *Union Pacific Railroad Company v. State Tax Commission*, (670 P.2d 878 at 475-476).

Finally, the Commission notes that the Taxpayer had the beneficial use of the money; hence interest accrual does not harm the Taxpayer.

Interest is calculated to March 31, 2009, and continues to accrue until paid. The total amount due reflects a payment of \$500 made on August 15, 2008.

WHEREFORE, the Notice of Deficiency Determination dated June 24, 2008, is hereby MODIFIED, and as so modified is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>		<u>TOTAL</u>
\$4,905	\$729		\$5,634
		Less	<u>(500)</u>
			<u>\$5,134</u>

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 _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
