

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 21756
[REDACTED],)
)
) DECISION
Petitioner.)
_____)

On January 8, 2009, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional income tax, penalty, and interest for the taxable year 2005 in the total amount of \$9,920.

[Redacted].

The Bureau reviewed the changes [Redacted] and determined the taxpayers' Idaho income tax return should have been corrected as well. The Bureau contacted the taxpayers on November 12, 2008, sending them a billing letter which explained the changes made by the IRS and what effect those changes had on their Idaho income tax. The taxpayers responded on December 12, 2008, by sending a check for the amount of tax due, along with a statement that said that since the Commission did not notify them sooner, they would not be paying the penalty and interest due.

The Bureau then adjusted the taxpayers' 2005 Idaho income tax return and sent them an NODD. The taxpayers responded on January 28, 2009, by returning the entire contents of the envelope sent by the Bureau along with a letter that was mostly illegible. Because the hand written note from the taxpayers was largely illegible, the Bureau requested clarification from the taxpayers of their intent. The taxpayers responded with a second hand written note just as illegible as the first. The Bureau deciphered some of the words and determined that the

taxpayers' intent was to protest the NODD. Their file was forwarded to the Legal/ Tax Policy division for administrative review.

The Commission sent the taxpayers a letter explaining the methods available for redetermining an NODD. The taxpayers did not respond. The Commission sent a follow-up letter to the taxpayers, but still received no response from them. Therefore, the 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 taxpayers' federal taxable income to include additional income, a corresponding adjustment must be made to the taxpayers' 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 Commission has no discretion in adding interest to the tax deficiency.

Therefore, the Commission must uphold the Bureau's adjustment to the taxpayers' 2005 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 taxpayers' tax deficiency. The 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 January 8, 2009, 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>
2005	\$7,985	\$399	\$1,743	\$10,127
			PAYMENT RECEIVED	<u>(7,985)</u>
			TOTAL DUE	<u>\$ 2,142</u>

Interest is calculated through September 15, 2009.

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

An explanation of the taxpayers' 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.
