

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21972
[Redacted])	
)	DECISION
Petitioner.)	
)	
)	

On April 2, 2009, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination to [Redacted] (petitioner) proposing additional income tax and interest for taxable years 1995 through 1999 in the total amount of \$50,434.¹ The petitioner filed a timely protest and petition for redetermination. The Idaho Code section 63-3045(2) hearing was held on August 3, 2010. The Commission, having reviewed the file, hereby issues its decision.

The outstanding issues are whether or not the petitioner is entitled to either receive interest on its refunds for taxable years 1997, 1998, and 1999 and from what date or, in the alternative, be allowed to offset its tax due for taxable years 1995 and 1996 by its overpayment in taxable years 1997, 1998, and 1999 before calculating interest.

IN GENERAL

The petitioner and the ITA are in agreement on the amount of the underpayment of tax for taxable years 1995 and 1996 as well as the overpayment of tax for the remaining taxable years. The petitioner and the ITA do not agree on the starting date for the calculation of interest on taxable years’ 1997, 1998, and 1999 overpayments.

¹ On September 28, 2008, ITA initially issued a Notice of Deficiency Determination that included taxable years 1995 through 1999 as well as taxable years 2000 through 2006 proposing additional tax and interest of \$18,280. That Notice of Deficiency appears to have been issued before the ITA had received the other agency’s audit report from the petitioner. On December 9, 2008, the ITA modified the September notice to include the other agency’s audit adjustments. As part of the NODD issued on April 2, 2009, the ITA cancelled its Notice of Deficiency Determination dated September 28, 2008, as it related to taxable years 1995 through 1999.

For the taxable years at issue, the petitioner remitted quarterly estimated payments. Upon filing its Idaho income tax return, rather than receive any excess estimated payment as a refund, the petitioner elected to have the excess estimated payment applied to the following year's quarterly estimated payments as shown in the following table:

Table 1 - Payments	1995	1996	1997	1998	1999
Tax before payments	\$198,740	\$83,214	\$65,220	\$201,769	\$219,621
Estimated tax payment	-77,000				
Quarterly estimated payments	-149,250	-139,500	-46,000	-155,393	-223,200
Prior year estimated payments		-27,510	-83,796	-64,576	-18,200
Subtotal	-27,510	-83,796	-64,576	-18,200	-21,779
Refund applied to next year	27,510	83,796	64,576	18,200	21,779
Refund issued	0	0	0	0	0

After an audit of its federal income tax returns, in its letter dated October 6, 2008, the petitioner calculated the additional amount of Idaho tax and interest owed to Idaho as a result of the changes in its federal taxable income as follows:

Table 2 – Petitioner’s Calculation				
Year	Tax Due	Refund	Interest	Total
1995	\$28,880		6,672	\$35,552
1996	26,566		6,304	32,870
1997		-6,059		-6,059
1998		-22,733		-22,733
1999		-30,123		-30,123
Total				<u>\$9,507</u>

The petitioner remitted a payment in the amount of \$9,507 along with the filing of the October 6, 2008, letter.

The ITA reviewed the information submitted by the petitioner. The ITA agreed with the additional amount of tax due for taxable years 1995 and 1996 as calculated by the petitioner; however, the ITA made changes to the amount of tax to be refunded to the petitioner for taxable years 1997, 1998, and 1999. The petitioner agrees with the ITA’s changes to its refund of tax for

taxable years 1997, 1998, and 1999. Additionally, the ITA recalculated the amount of interest owed on the refund years and limited the amount of interest due on the refund years to the date the refund claim was made. The petitioner takes exception to the ITA’s calculation of interest.

The ITA’s calculation is shown as follows:

Table 3 – ITA’s Calculation

Year	Tax Due	Refund	Interest	Total
1995	\$28,880		26,513	\$55,393
1996	26,566		22,192	48,758
1997		-11,745	-438	-12,183
1998		-8,056	-300	-8,356
1999		-22,820	-851	-23,671
Total				59,941
Payment received				-9,507
Net amount due				<u>\$50,434</u>

In the NODD, the ITA provided the following explanation:

Idaho Code section 63-3045 provides that interest shall accrue upon any tax deficiency. Idaho Code Section 63-3073 provides that interest shall be allowed on a credit or refund of tax erroneously or illegally assessed or collected, but no interest shall be allowed on refunds resulting from voluntary or unrequested payments in excess of tax due.

On June 17, 2009, the ITA provided the petitioner an e-mail to further clarify why interest was not allowed on the refunds from the due date forward. The e-mail contained a brief discussion and analysis of the interplay between Idaho Code sections 63-3035, 63-3045, 63-3072, and 63-3073. The analysis contained within this e-mail had taken place prior to the commencement of the audit of the petitioner and was unrelated to the petitioner. The conclusion contained in the e-mail was that no interest was due on an overpayment upon the later filing of an amended return because the excess estimated payment was not “illegally, erroneously, or wrongfully assessed or collected,” and that, “[t]he self-assessed tax was not erroneously assessed at the time it was filed. It was a tax correctly assessed based on the information supplied by the

taxpayer at that time.” The recommendation in the e-mail was approved for implementation in March 2008. The ITA had followed the adoption of the recommendation when it issued the NODD.

In response to the NODD and the analysis contained in the e-mail, in its letter dated June 3, 2009, the petitioner asserted that:

. . . the Commission has allowed refund interest [in the past] to be calculated from the due date of the return. Computing refund interest in this manner is consistent with I.C. Sections 63-3073 and 63-3045 which have not materially changed since enactment more than 50 years ago. . . .

. . . there has been no new legislation in support of the Commission’s new position and if it had been the intention of the legislature to limit refund interest than it would have clearly done so. . . . The Commission erred by relying on I.C. Sec. 63-3035 which pertains to payroll withholding taxes not Corporate Income tax refunds” . . .

Additionally, I.C. Sec. 63-3073 provides exceptions to when interest is not applicable to refunds and the new position of the commission is not listed in these exceptions.

As an alternative argument, the petitioner asserted that:

. . . the Commission’s new interpretation is contrary to I.C. Sec. 63-3072(a) that provides in part, “where there has been an overpayment of the tax imposed by the provision of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

IDAHO LAW AND ANALYSIS

What is the “starting date” for the calculation of interest on the refunds when an amended return is filed? Before that question can be answered, the Commission must first determine what “type” of refund is at-issue. These are the central questions in this docket number. The Commission is not aware of any Idaho court having issued a decision answering these questions.

At the heart of this debate is the statutory language found in nine Idaho statutes: Idaho Code sections 63-3032, 63-3033, 63-3034, 63-3036A, 63-3045, 63-3045A, 63-3072, 63-3073, and 63-3085.

Idaho Code section 63-3032 sets the statutory date for the filing of an income tax return, and Idaho Code section 63-3033, notwithstanding Idaho Code section 63-3032, provides for an automatic extension of the time for filing an income tax return.

Idaho Code section 63-3034 requires a corporation to pay 100 percent of its tax by the due date of the filing of the return, including extensions of time, and Idaho Code section 63-3085 states that the tax “shall become due and payable to the state tax commission” on the statutory date for the filing of return.

Idaho Code section 63-3036A(d) requires a corporation to make payments of estimated taxes. Idaho Code section 63-3045A(d) treats amounts paid as estimated taxes as “part payment of the tax” imposed by the Idaho Income Tax Act.

Idaho Code section 63-3045A(1)(c) does **not** treat the amounts paid as estimated income tax as having been assessed. Subsection (a) of the same statute treats tax payments as assessed upon the filing of an income tax return or amended return signed by a taxpayer or its representative showing the taxes due.

Idaho Code section 63-3072(a) requires the balance in excess of the tax due to be refunded to the taxpayer, and subsection (c) of the same statute places a three-year limitation, beginning with the due date of the taxable year, on the filing of a claim for refund of excess estimated payments.

Upon the filing of an amended return, Idaho Code section 63-3045(6)(a) provides for interest on refunds of tax as shown on the “same return” (i.e. the amended return).

What is lacking in Idaho Code sections 63-3032, 63-3033, 63-3034, 63-3036A, 63-3045, 63-3045A, 63-3072, and 63-3085 is a provision that provides for the “starting date” for the calculation of interest on a refund or the type of refund upon which interest is paid on.

Idaho Code section 63-3073 governs the allowance of interest on refunds. This statute states, in pertinent part:

Upon the allowance of a . . . refund of any tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such . . . refund at the rate provided in section 63-3045, Idaho Code, from the date such tax, . . . or sum was paid or from the date the return was required to be filed, whichever date is the later, to the date of the allowance of the refund, . . . provided, however, that in case of a voluntary and unrequested payment in excess of actual tax liability, no interest shall be allowed when such excess is refunded or credited.

(Emphasis added.)

The language found in current Idaho Code section 63-3073 can be traced back to Sec. 61(a) of the Idaho Income Tax Act codified in 1959. The current language is nearly identical to the language codified in 1959. Furthermore, in Section 73 of the Property Relief Act of 1931, an Act that was repealed upon the passage of the 1959 Act, once again the language is nearly identical except for the additional requirements that no interest be paid on a voluntary and unrequested payment and that interest will be paid from the date the tax is paid or the date the return is required to be filed, whichever date is later.

The language found in Section 73 of the Property Relief Act of 1931 is nearly identical to the language found in section 1116(a) of the federal Revenue Act of 1926 and section 1019(a) of the federal Revenue Act of 1924. The Revenue Act of 1926, Section 1116(a) states, in pertinent part:

Sec. 1116(a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty

collected or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken . . .

In summary, when drafting the language under what is now Idaho Code section 63-3073, Idaho modeled its language after that of a federal statute. A state statute, which incorporates in substantial part provisions of a federal statute, will be presumed to have been adopted with the federal statute's prior constructions by courts of foreign jurisdiction. Kopp v. Baird, 79 Idaho 152, 313 P.2d 319 (1957).

In reviewing federal case law as it relates to the issuance of interest on overpayments, a number of concepts stand out. For example, in FleetBoston Fin. Corp. v. United States, 68 Fed. Cl. 177 (2005), aff'd 483 F.3d 1345 (Fed. Cir. 2007), the Court of Federal Claims noted that the starting point in determining if interest is owed must be the language and structure of the relevant interrelated statutes. *Id at 179*. The "use of money principal" has little, if any, independent normative value. Viewed properly, it is nothing more than a tool of statutory construction, used to decide whether a specific statute authorizes the interest treatment sought, and not as an independent basis of recovery. *Id at 179*. Interest may not be awarded by the court against the United States without explicit statutory authorizations, to do so would seem to run headlong into the venerable concept of sovereign immunity. *Id at 185*. The twin notions that, under income tax laws, "there is symmetry in the payment of overpayment and underpayment interest," and "the tax code interest provisions are to be interpreted, contrary to their language, to require the favorable netting of overpayments and underpayments" has been rejected by the federal court. *Id at 186*.

After reviewing several federal cases involving the issue of the date upon which interest is to be calculated from refunds of tax, there is one case that, above all others, stands out given the facts in the case before the Commission. In Blair v. United States ex rel. Birkenstock, 271 U.S. 348 (1926), the Internal Revenue Service (IRS) argued before the Supreme Court that the language contained within section 1019(a) of the 1924 Act, provides:

excess quarterly payment is not a ‘tax erroneously or illegally assessed or collected,’ within the meaning of section 1019, if, when it is made, any part of the proper tax for the year has not been paid; that such overpayment becomes a ‘tax erroneously or illegally assessed or collected’ only when the amount paid, added to the previous quarterly payments, exceeds the whole tax due for the year.

(Emphasis added.) *Id at 351.* The Supreme Court agreed with the IRS and stated, in pertinent part, that

. . . the mere overpayment of an installment is treated as a payment on account of the tax which is assessed for that year, and is not a ‘tax erroneously or illegally assessed or collected’ within the meaning of the refund provisions . . . and so is not subject to its provisions regulating the allowance of interest. Payments in excess of the total amount of the tax, then and subsequently made, are subject to refund . . . and interest must be allowed on them. . . .

(Emphasis added.) *Id at 353.*

As in *Blair*, estimated tax payments are treated under Idaho law as simply payments on account of the tax and are not a “tax erroneously or illegally assessed or collected” within the meaning of Idaho Code section 63-3073. However, upon assessment, that portion of the corporate estimated payments in excess of the assessment (in this case, self-assessment) is considered a “tax erroneously or illegally assessed or collected.” Thus, it stands to reason that where it is subsequently determined that the taxpayer’s self-assessed payment is in excess of the total amount of the tax due for the taxable year, that excess is a “tax erroneously or illegally assessed or collected, . . . or of any sum which was excessive or in any manner wrongfully collected.” (Emphasis added.) As such, the petitioner’s overpayment of self-assessed tax for

taxable years 1997, 1998, and 1999, falls within the statutory language for the type of refund that interest is paid on. However, the Idaho analysis does not end here as the current Idaho statute contains two important differences from that contained in the federal statute; no interest is to be paid on a “voluntary and unrequested” payment and the date from which to calculate interest on the refund is the date of payment or the date prescribed for the filing of the return, whichever date is the later.

Idaho Code section 63-3034 **requires** the petitioner to pay 100 percent of its income tax on or before the due date. The petitioner’s estimated tax payments equal to the tax due as shown on the return is the petitioner’s payment of its Idaho corporate income tax and is considered assessed under Idaho Code section 63-3045A(1)(a); therefore, the overpayments as shown on the subsequent refund claim are not from a “voluntary **and** unrequested” payment and the petitioner is entitled to interest on the overpayments.

The Commission will now turn its analysis to the date that interest should be calculated from. The Commission’s records reveal that the petitioner had remitted quarterly estimated payments in excess of the actual amount due by or before the Idaho Code section 63-3032 due date of the return and had filed its Idaho income tax return for taxable years 1997, 1998, and 1999, on October 6, 1998, September 29, 1999, and October 12, 2000, respectively. Thus the petitioner qualified for the Idaho Code section 63-3033(a) automatic six-month extension of time to file its return.

Unlike the federal provisions for which Idaho Code section 63-3073 was substantially modeled after, interest does not start to run on an overpayment until “the date such tax, . . . or sum was paid or from the date the return was required to be filed.” (Emphasis added.) Therefore, it is the Commission’s reading of Idaho Code section 63-3073 “from the date the

return was required to be filed” as referring to Idaho Code section 63-3032 “statutory” due date for the filing of income tax returns. Accordingly, the “starting date” upon which the petitioner is entitled to interest on its refunds of tax for taxable years 1997, 1998, and 1999 is the original due date of the return, not the date the refund claim was filed.

WHEREFORE, the Notice of Deficiency Determination dated April 2, 2009, is hereby MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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

Year	Tax	Refund	Penalty	Interest	Total
1995	\$28,880			28,725	\$57,605
1996	26,566			24,226	50,792
1997		-11,745		-9,687	-21,432
1998		-8,056		-6,023	-14,079
1999		-22,820		-15,385	-38,205
					<u>34,681</u>
			Less payment received		<u>-9,507</u>
			TOTAL DUE		<u><u>\$25,174</u></u>

Interest is calculated through December 15, 2010, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6)(c).

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

An explanation of the petitioner’s rights to appeal this decision is enclosed.

DATED this ____ day of _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.
