

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22504
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On January 11, 2010, the staff of the Taxpayer Accounting Section of the Revenue Operations Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable year 2008 in the total amount of \$9,504.96.

The taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather submitted an amended return for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers filed their 2008 Idaho individual income tax return within the automatic extension of time for filing Idaho income tax returns. The taxpayers' return was identified as a return that had an error. The error was cleared, and the taxpayers' return was referred for further review. The Taxpayer Accounting Section (Taxpayer Accounting) reviewed the taxpayers' return and, based upon information available to the Tax Commission, determined that [Redacted] resident status as a nonresident was incorrect. Taxpayer Accounting corrected the taxpayers' return and sent them a notice of correction.

The taxpayers disagreed with Taxpayer Accounting's correction stating that [Redacted] residence and place of employment [Redacted]. The taxpayers provided letters [Redacted] employer and his landlord to support their statement and position. Taxpayer Accounting reviewed the information and referred the matter for administrative review.

The taxpayers contacted the Tax Commission and stated they wanted to move quickly to get this matter resolved. The Tax Commission reviewed the matter and sent the taxpayers a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayers' apparent response to the Tax Commission's letter was the filing of an amended return for 2008. The amended return changed [Redacted] resident status to an Idaho resident, reported all his income to Idaho, and claimed additional expenses that were not claimed on the taxpayers' original return. The taxpayers included a letter with their amended return that stated they got some bad advice from their tax preparer when their original return was prepared. They stated the amended return corrects the problem. The taxpayers also asked that the penalty and interest be waived.

The Tax Commission reviewed the taxpayers' amended return and found that the taxpayers fully incorporated the change Taxpayer Accounting made to their original return. Therefore, the Tax Commission accepts the taxpayers' amended return in lieu of Taxpayer Accounting's correction.

Regarding their request to waive penalty and interest, Idaho Code section 63-3045 states that interest shall be assessed upon any tax deficiency. This provision was reviewed and upheld by the Idaho Supreme Court in Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), wherein the court stated, "This section is not discretionary, but rather, it is mandatory." Therefore, the Tax Commission does not have the ability to waive or abate interest. Penalties, on the other hand, may be discretionary in certain instances, while others may be waived for reasonable cause. In this case, the penalty was added because the taxpayers did not meet the requirements for a valid extension. This penalty was appropriate when the original return was filed; however, it is not a penalty for a subsequent change to the

taxpayers' income tax return. Therefore, the Tax Commission finds the added penalty inappropriate and hereby cancels this addition to the taxpayers' tax.

WHEREFORE, the Notice of Deficiency Determination dated January 11, 2010, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$7,757	\$ 0	\$459	\$8,216
			LESS PAYMENT	<u>(4,000)</u>
			BALANCE DUE	<u>\$4,216</u>

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 _____ 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.
