

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 22621
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

[Redacted] (taxpayers) protested the Notice of Deficiency Determination issued by the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission dated February 9, 2010, asserting additional Idaho income tax and interest for taxable year 2007 in the total amount of \$3,917.

On February 23, 2010, the taxpayers filed a timely appeal and petition for redetermination. The only issue in this docket is the interest added to the tax deficiency determined by the audit staff. The taxpayers requested a hearing which was held on October 14, 2010. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers are Idaho residents who timely filed and amended their Idaho individual income tax return for taxable year 2007. The taxpayers amended their original Idaho return to include a sale of [Redacted] property and to claim the Idaho capital gains deduction on the property sold. The Income Tax Audit Bureau (Bureau) reviewed the taxpayers' amended return and determined the property sold did not qualify for the Idaho capital gains deduction. The Bureau disallowed the capital gains deduction and sent the taxpayers a Notice of Deficiency Determination.

The taxpayers questioned the disallowed capital gains deduction and the interest added to the tax deficiency. The Bureau explained the adjustment and the addition of the interest. The taxpayers paid the deficiency in full but protested the addition of interest to the tax deficiency.

The taxpayers stated it was unconscionable that it took the Tax Commission over two years to discover and correct their 2007 return. They stated if the additional tax was due, they would take that up with their tax preparer but being charged interest on top of the additional tax is an outrage. The taxpayers stated the Tax Commission's business should be done more timely like private business. They stated the citizens and voters that do business with the state of Idaho should not be penalized for the Tax Commission's tardiness.

The matter was referred for administrative review, and the Tax Commission sent the taxpayers a letter that discussed their options in the administrative review process. The taxpayers chose to have a hearing. During the hearing, the taxpayers expressed their displeasure with the addition of interest to the tax deficiency. They stated as soon as they were notified of the problem on their 2007 tax return the additional tax was paid without delay. They stated it is not good business practice to make corrections to income tax returns two years after the returns were filed and then charge interest. If this were to happen in the private sector, the business would soon be out of business.

Idaho Code section 63-3068 states that a notice of deficiency must be issued within three years from either the due date of the income tax return or the date the return was filed, whichever is later. Therefore, in general, the Tax Commission has three years from the due date of the return to review, examine, and adjust a taxpayer's income tax return.

Idaho Code section 63-3045(6) states that interest shall apply to deficiencies in tax and refunds of tax. It further states that interest upon any deficiency shall be assessed at the same time as the deficiency. This section of the Idaho Code was challenged in the courts as to its applicability. The Idaho Supreme Court in Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), 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. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

The taxpayers agreed that they had a deficiency in tax for 2007 due to the claimed Idaho capital gains deduction. Therefore, according to Idaho Code section 63-3045, interest must be charged on that deficiency.

The taxpayers stated it was unbusiness like that the Tax Commission waited so long in identifying the error on their return and therefore accruing the interest charged. The Tax Commission's timeliness in identifying the taxpayers' return as one with an issue is something the Tax Commission does not take lightly. In fulfilling its charge and duties (Idaho Code section 63-105), the Tax Commission makes every effort to review and analyze all the information it receives in a timely manner. Ideally, the Tax Commission would like to notify taxpayers of any tax deficiencies shortly after the end of the filing season. However, in most cases, the compilation of return information and the manual review process makes it impossible to make that determination. Nevertheless, the Tax Commission follows its directive and reviews all the possible returns it can with the resources it has been allotted within the time prescribed by statute.

WHEREFORE, the Notice of Deficiency Determination dated February 9, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

Since the taxpayers paid the deficiency in full as part of their appeal, no further DEMAND for payment is required.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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.