

and the error was their accountant's error. The Bureau acknowledged the taxpayers' request as a protest and referred the matter for administrative review.

The Tax Commission sent the taxpayers a letter that discussed their options in the administrative review process. The taxpayers did not respond, so the Tax Commission decided the matter based upon the information available.

LAW AND ANALYSIS

Idaho Code section 63-3045(1)(a) states that if the State Tax Commission determines there is a deficiency in tax, it shall, upon discovery thereof, send a notice of the deficiency to the taxpayer.

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.

An earlier version of Idaho Code section 63-3045(6) 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.

The taxpayers agreed there was a deficiency in tax for taxable years 2007 and 2008; however, the deficiency was due to an error made by their accountant who they trusted to prepare their income tax returns correctly. The taxpayers stated they understand the law but hope that the circumstances can alter their case and invoke some flexibility.

CONCLUSION

The taxpayers had a deficiency in the tax reported on their 2007 and 2008 Idaho income tax returns. The Idaho Code states that interest shall be added to tax deficiencies. "The Tax Commission's function is to uphold the law as written." Bogner v. State Tax Commission, 107 Idaho 854, 693 P.2d 1056, (1984); Potlatch Corp. v. Idaho State Tax Comm'n, 128 Idaho 387, 913 P.2d 1157 (1996). Therefore, the Tax Commission must uphold the inclusion of interest in the Notice of Deficiency Determination.

THEREFORE, the Notice of Deficiency Determination dated July 28, 2010, and directed to [Redacted] is AFFIRMED.

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.
