

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24010
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On March 3, 2011, the staff of the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional income tax and interest for the taxable years 2007 and 2008 in the total amount of \$1,405.

On May 4, 2011, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing and has provided only the information presented with his protest letter. The Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 2007 and 2008 Idaho individual income tax returns. The Income Tax Audit Bureau (Bureau) reviewed those returns and found the taxpayer claimed a deduction for retirement benefits on the returns. The Bureau determined the taxpayer did not qualify for the retirement benefits deduction, so the Bureau adjusted the taxpayer's returns for both taxable years 2007 and 2008. In addition to the adjustment for the retirement benefits deduction, the Bureau added interest to the taxpayer's tax deficiency.

The Bureau sent an NODD to the taxpayer. The taxpayer responded, paid the additional tax and interest in full, but protested the addition of interest on the deficiency. The taxpayer requested the interest be waived or abated due to the fact that he utilized the services of AARP for the preparation of his returns and their lack of knowledge or training concerning the

retirement benefit deduction was the cause of the NODD. He also stated he has always complied with his filing requirements timely and accurately in the past.

Idaho Code § 63-3045 provides for the addition of interest to any tax deficiency.

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 specific wording of Idaho Code § 63-3045 is "interest upon any deficiency shall be assessed."

The addition of interest has been addressed in the courts. In hearing Union Pacific R. Co. v. State Tax Com'n, 105 Idaho 471, 670 P.2d 878 (1983), the Idaho Supreme Court addressed whether the taxpayer was required to pay interest, stating:

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.

Accordingly, the Commission finds interest is a statutory addition to tax deficiencies of which the Commission has no discretion. Therefore, the Commission must uphold the addition of interest to the taxpayer's tax deficiency.

THEREFORE, the NODD dated March 3, 2011, is hereby AFFIRMED.

IT IS ORDERED that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$604	\$99	\$ 703
2008	638	64	<u>702</u>
		Less Payment	<u>(1,405)</u>
		TOTAL DUE	<u>\$ 0</u>

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.  
  
\_\_\_\_\_