

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

In the Matter of the Protest of )  
 ) DOCKET NO. 24708  
[Redacted] )  
 )  
Petitioner. )  
 )  
 ) DECISION  
 )  
\_\_\_\_\_ )

BACKGROUND

The Income Tax Audit Bureau (Audit) issued a Notice of Deficiency Determination (NODD) to [Redacted], (Petitioner) dated November 15, 2011, asserting income tax, penalty, and interest in the total amount of \$3,544 for taxable years 2009 and 2010. [Redacted], under the Petitioner’s Limited Power of Attorney (POA), protested the Notice of Deficiency Determination on January 17, 2012. Audit held the file for several months. On August 7, 2012, Audit transferred the case to the Tax Policy Department for resolution. On August 8, 2012, the Commission sent a letter to the POA explaining the Redetermination process and the Petitioner’s rights to a hearing, including the right to provide additional information to be considered. The POA responded in a letter on October 4, 2012, requesting until October 31, 2012, to provide additional information. The POA was reminded by phone of their request for additional time, on November 19, 2012, November 21, 2012, and on December 11, 2012. To date no information has been received.

ISSUES

1. Whether the Petitioner was entitled to claim the Investment Tax Credit (ITC) carried forward from prior years, or whether the credits had be used up previously.
2. Whether Audit was correct in imposing a negligence penalty in addition to the tax liability of the Petitioner.
3. Whether interest on the tax liability continues to accrue until paid.

## DISCUSSION

The instructions for Form 49 Idaho Investment Tax Credit (ITC) say to attach a list of all the property acquired during the year that qualifies for the ITC. The Petitioner did not provide a list of qualified purchases on any of the tax returns since the 2006 return. Based on the information provided with the 2006 through 2010 tax returns, the Petitioner had claimed more in Idaho Investment Tax Credit than the amounts they reported as eligible purchases multiplied by the three percent (3%) credit amount. By the taxable year 2009, \$835 more credit was claimed than was earned, and in the taxable year 2010, \$2,406 more credit was claimed than earned. Audit attempted numerous times before issuing the NODD, and after the Petitioner protested to get them to provide an explanation and the information required to support a claim for the Investment Tax Credit.

## LAW AND ANALYSIS

The primary law that allows an Idaho Income Tax Credit for business equipment placed in service in Idaho is 63-3029B.

63-3029B. Income tax credit for capital investment. (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

- (a) The tax credit carryovers; and
  - (b) The tax credit for the taxable year.
- (2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.
- (3) As used in this section "qualified investment" means certain property which:
- (a) (i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain

- regulated companies in section 46(f) of the Internal Revenue Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight; or
- (ii) Is qualified broadband equipment as defined in section 63-3029I, Idaho Code; and
  - (b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and
  - (c) Has a situs in Idaho as determined under subsection (9) of this section.

The Idaho Income Tax Administration Rules 710-719 govern the specifics of claiming the investment tax credit.

### **710. IDAHO INVESTMENT TAX CREDIT: IN GENERAL (RULE 710).**

Section 63-3029B, Idaho Code. (3-20-97)

**01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 719 of these rules. (5-8-09)

**02. Limitations.** The investment tax credit allowable in any taxable year shall be limited by the following: (3-20-97)

**a. Tax liability.** (3-30-01)

i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. (3-30-01)

**b. Credit for qualifying new employees.** If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-30-01)

**c. Unitary taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-01)

**d. Nonrefundable credits.** The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. (3-15-02)

**03. Carryovers.** (3-20-97)

**a.** Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into

taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. (3-30-1)

**b.** For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended. (3-30-01)

**c.** Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. (3-0-1)

**04. Motor Vehicle.** Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. (3-20-97)

**05. Expensed Property.** The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-30-01)

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment for property acquired after 2007.

The record keeping requirements can be found at Rule 716:

**716. IDAHO INVESTMENT TAX CREDIT: RECORD-KEEPING REQUIREMENTS (RULE 716).** Section 63-3029B, Idaho Code. (3-20-97)

**01. Information Required.** Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following: (3-20-97)

**a.** A description of the property; (3-20-97)

**b.** The asset number assigned to the item of property, if applicable; (3-20-97)

**c.** The acquisition date and date placed in service; (3-20-97)

**d.** The basis of the property; (3-20-97)

**e.** The class of the property for recovery property or the estimated useful life for nonrecovery property; (3-20-97)

**f.** The designation as new or used property; (3-20-97)

**g.** The location and utilization (the usage both in and outside Idaho) of the property; (3-20-97)

**h.** The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and (3-20-97)

**i.** The reason for acquisition if acquired prior to January 1, 1995. (3-20-97)

**02. Accounting Records Subject to Examination.** Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following:(3-20-07)

**a.** Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. (3-20-97)

**b.** Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents. (3-20-97)

**c.** Records verifying ownership including purchase contracts and cancelled checks. (3-20-97)

**d.** Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. (3-20-97)

**e.** Purchase orders, authorizations for expenditures or other records that identify the reason for acquisition for property acquired prior to January 1, 1995. (3-20-97)

**f.** Log books measuring the use of property used both in and outside Idaho. These logs must be maintained for each item of property on which investment tax credit is claimed. These logs should measure use of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use in Idaho of trucks, trailers, locomotives, and railcars shall be calculated according to actual mileage in and outside Idaho. (3-20-97)

**g.** A system that verifies that property on which the investment tax credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. (3-20-97)

**03. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-20-97)

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In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayers to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986).

The taxpayers did not respond to the Commission's many letters and phone calls with the information supporting their Investment Tax Credit claim, so the Commission reviewed the information available and made this decision.

CONCLUSION

1. The Petitioner failed to meet their responsibility of providing information supporting their eligibility for the Idaho Investment Tax Credit claimed in the taxable years 2009 and 2010.
2. Due to their not following even the minimal instructions for filing their return, the tax liability was understated by much more than five percent. See Idaho Code section 63-3045.
3. Interest on an outstanding tax liability is required by statute. See Idaho Code section 63-3045.6.

THEREFORE, the Notice of Deficiency Determination dated November 15, 2011, and directed to [Redacted], is AFFIRMED by this decision.

IT IS ORDERED 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>
12/31/2009	835	42	105	979
12/31/2010	2,406	120	116	<u>2,709</u>
				<u>3,688</u>

The Commission updated the interest through March 31, 2013, on the Petitioner's tax liability.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2013, 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.

[Redacted]

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