



payments for the past two years for the 2007 income tax she owes to the state of Idaho. Petitioner also stated the interest charge is extreme and she should not have to pay the penalty.

The Bureau acknowledged Petitioner's protest, explained that the Tax Commission had no record of receiving a paper income tax return or an electronically filed return and the addition of interest and penalty to Petitioner's tax, and that the payments Petitioner had made were to pay the tax Petitioner owed for taxable year 2008. Petitioner disagreed and was adamant that she filed her 2007 Idaho income tax return, and the payments she was making were for her 2007 income tax. Petitioner requested the matter be forwarded for administrative review.

The Bureau referred the matter, the Tax Commission reviewed the case, and a letter was sent to Petitioner that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner failed to respond, so the Tax Commission sent a follow-up letter to Petitioner. Petitioner requested a telephone hearing and asked for an additional eight weeks to submit additional documents for consideration. Petitioner stated she had legal representation and would have her attorney contact the Tax Commission in the near future. The Tax Commission sent Petitioner a power of attorney form to complete and return; however, the form was not returned, and Petitioner has made no further attempts to contact the Tax Commission. Considering that Petitioner has had ample time to provide whatever additional documentation or information she desired, the Tax Commission decided the matter based upon the information available.

### **LAW AND ANALYSIS**

Idaho Code section 63-3030 provides the income thresholds for filing Idaho individual income tax returns. In general, if an individual is required to file a federal income tax return, an Idaho income tax return is required as well. Petitioner filed a federal income tax return for

taxable year 2007, and the Tax Commission received information that Petitioner earned wages in Idaho in excess of the filing threshold. Therefore, since Petitioner's wages are considered Idaho source income, Petitioner was required to file a 2007 Idaho individual income tax return.

Petitioner did not deny she had a requirement to file a 2007 Idaho income tax return. Petitioner stated she filed her Idaho return electronically. Petitioner also disagreed with the addition of interest and penalty to her tax.

In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer 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). Petitioner stated she filed her Idaho income tax return; however, Petitioner provided no evidence of the filing, nor did she provide a copy of the return she stated was filed. Petitioner did not meet her burden of proof.

The return the Bureau prepared for Petitioner was based upon the income reported to the Tax Commission and the Petitioner's 2007 [Redacted] income tax return. The Tax Commission reviewed the return, and found the return is an accurate representation of Petitioner's Idaho taxable income. Therefore, the Tax Commission upholds the Bureau's determination of Petitioner's Idaho income tax liability.

The Bureau added interest and penalty to Petitioner's Idaho tax. Petitioner disagreed with those additions. Idaho Code section 63-3045(6) states that interest shall apply to deficiencies and shall be assessed at the same time as the deficiency. In Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), the taxpayer contested the requirement to pay interest. The Court 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, the Tax Commission upholds the addition of interest to Petitioner’s tax deficiency.

The Bureau also added the failure to file penalty of Idaho Code section 63-3046(c)(1). Since the Tax Commission has no record of Petitioner filing a 2007 Idaho income tax return on, before, or after the due date of the return, and Petitioner has not shown reasonable cause for not timely filing her 2007 income tax return, the Tax Commission finds the addition of the penalty appropriate.

### CONCLUSION

Petitioner was required to file a 2007 Idaho individual income tax return. Petitioner provided no evidence a return was filed, nor did she show the taxable income as determined by the Bureau was incorrect. Therefore, the Tax Commission hereby upholds the Notice of Deficiency Determination.

THEREFORE, the Notice of Deficiency Determination dated November 30, 2011, and directed to [Redacted] is hereby AFFIRMED.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|----------------|-----------------|--------------|
| 2007        | \$654      | \$164          | \$164           | \$982        |
|             |            | LESS           | PAYMENTS        | <u>45</u>    |
|             |            |                | BALANCE DUE     | <u>\$937</u> |

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.  
  
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