

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25618
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On March 21, 2013, 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] (taxpayers) proposing additional income tax and interest for taxable year 2009 in the total amount of \$630.

On April 3, 2013, [Redacted] filed a timely appeal and petition for redetermination. [Redacted] appeal letter did not mention the denial of the Idaho Capital Gains deduction on his 2009 Idaho income tax return, but instead questioned why he was being assessed interest on the additional amount of tax due. The Commission, having reviewed the file, hereby issues its decision upholding the NODD.

The Bureau selected the taxpayers' 2009 Idaho individual income tax return for review, specifically the Idaho Capital Gains deduction. During taxable year 2009, the taxpayers, based on their [Redacted] income tax return, realized a \$16,465 gain from an installment sale of property. The property sold was located in [Redacted].

Idaho Code section 63-3022H provides taxpayers under certain circumstances an Idaho capital gains deduction as follows:

**63-3022H. Deduction of capital gains.** (1) If an individual taxpayer reports a net capital gain in determining taxable income, sixty percent (60%) of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.

(2) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. Net capital gains treated as ordinary income by the internal revenue code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) As used in this section “qualified property” means the following property having an Idaho situs at the time of sale:

(a) Real property held at least eighteen (18) months.....

Since the property sold did not have an Idaho situs, the Bureau adjusted the taxpayers’ 2009 Idaho individual income tax return, disallowing the Idaho capital gains deduction, and sent them an NODD.

Upon receipt of the NODD, [Redacted] sent in a letter asking why he was being charged interest, when it was not his fault the Commission did not find the error until now. The Bureau sent [Redacted] a letter acknowledging his protest and request for penalty abatement, along with the statutory authority for assessing the penalty. The Bureau received no further contact from [Redacted] and the file was forwarded to the Legal/Tax Policy Division of the Commission for administrative review.

The Commission sent [Redacted] a letter giving him two options for having the NODD redetermined. [Redacted] did not respond.

According to the taxpayers’ 2009 [Redacted] income tax return, the installment sale income received in taxable year 2009, was from the sale of property located in [Redacted], not in Idaho. Therefore, the taxpayers would not be entitled to the Idaho capital gains deduction.

However, as stated previously, [Redacted] does not seem to disagree with the disallowance of the Idaho capital gains deduction and the resulting additional tax due, but rather the interest assessed on the additional tax due. [Redacted] stated he does not feel the interest

charges are warranted due to the amount of time that passed between the timely filing of their return and the audit adjustment.

Idaho Code section 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 the Idaho Code 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 taxpayers’ tax deficiency.

THEREFORE, the Notice of Deficiency Determination dated March 21, 2013, and directed to [Redacted], is AFFIRMED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$559	\$80	\$639

Interest is calculated through November 20, 2013.

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

An explanation of the taxpayers’ 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.  
  
\_\_\_\_\_