

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25646
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On January 25, 2013, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing income tax, penalty, and interest for taxable year 2007 in the total amount of \$7,412.

On January 29, 2013, the taxpayers filed a timely protest. The taxpayers requested an informal hearing during the appeals process, but failed to provide a list of dates in which they were available. The Commission made several attempts to contact the taxpayers regarding dates for the informal conference, but did not receive a response. The Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

A review of Commission records indicate the taxpayers may be Idaho residents who meet the Idaho individual income tax filing requirements. The Bureau sent the taxpayers a letter requesting information concerning their potential filing requirements for taxable year 2007. The taxpayers responded stating that they were not required to file in Idaho because they were living in [Redacted].

The taxpayers subsequently provided the Bureau with copies of their [Redacted] income tax returns for taxable years 2007 through 2010. The 2007 [Redacted] return shows [Redacted] as a full-year nonresident, and [Redacted] as a full-year resident. Based on this information and the information in Commission records, the Bureau prepared the missing Idaho return on behalf

of the taxpayers and sent them an NODD. The NODD reflected [Redacted] as a resident of Idaho and [Redacted] as a nonresident.

The taxpayers protested the Bureau's determination. In the protest letter, dated January 29, 2013, [Redacted] stated that even though he did not live in Idaho in taxable year 2007, he did submit an Idaho individual income tax return, along with payment of the tax due, prior to the April 15, 2008, due date.

On January 30, 2013, the Bureau sent a letter to the taxpayers acknowledging the protest, and requesting a copy of their 2007 Idaho individual income tax return, proof of payment, and verification that the return was received by the Commission. The taxpayers responded with a copy of an Idaho Form 43 that was incomplete and was not signed by the taxpayers. The Bureau reviewed the return, made some adjustments, and returned it to the taxpayers along with an explanation of the differences between the figures shown on the return and those on the NODD.

On March 19, 2013, the Bureau received payment of the amount of tax due shown on the NODD, along with a letter from the taxpayers stating that they had contacted their bank and learned that the check they believed was sent to the Commission in 2008 for payment of Idaho income taxes, was not cashed. The taxpayers did not submit payment for the interest and penalty amounts shown on the NODD. The taxpayers stated in their letter that they did not believe that they should be charged interest and penalty, and that it was absurd for the state to wait five years to inform him that his tax return did not arrive. The Bureau transferred the taxpayers' file to the Legal/Tax Policy Division for administrative review.

On May 6, 2013, the taxpayers were sent a letter advising them of their appeal rights. On May 23, 2013, [Redacted] responded by email stating that he would like to participate in an informal telephone conference, and that he had several documents to present for the Commission's

consideration. A response was sent to the taxpayer acknowledging his request for a hearing and asking for a list of dates in which he would be available. When no response was received, a follow-up letter was sent by the policy specialist, which also went unanswered.

The Idaho nonresident individual income tax return, the Bureau prepared on behalf of the taxpayers, was based on income information gleaned from the taxpayers' [Redacted] income records and the records retained by the Commission. However, subsequent to the issuance of the NODD, the taxpayers provided additional information, and the Bureau modified the NODD to allow a credit for a contribution to the [Redacted] and to remove from income the state tax refund reported on the taxpayers' [Redacted] return. The taxpayers' withholding of \$12,333 for taxable year 2007, was allowed to offset a portion of the Idaho income tax due.

The taxpayers have not disputed the income amounts shown in the modified deficiency determination. Rather, their primary disagreement centers on the Commission's assessment of penalty and interest resulting from the failure to pay their 2007 Idaho income tax.

The interest and penalty added by the Bureau are pursuant to Idaho Code §§ 63-3045 and 63-3046.

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 Idaho Supreme Court heard Union Pac. R.R. v. State Tax Comm'n, 105 Idaho 471, 670 P.2d 878 (1983). In this case, there was a substantial delay in resolving the taxpayer's liability. In addressing whether the taxpayer was required 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.

Interest imposed under Idaho Code §63-3045 is a mandatory charge. The charge is calculated from the due date of the return at a rate that is established by the legislature each year; the Commission has no discretion in adding interest to the tax deficiency.

Idaho Code §□ 63-3046(c) states:

(c) In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

The Bureau added interest and penalty to the taxpayers' tax deficiency. The Commission reviewed those additions and found them appropriate and in accordance with Idaho Code §§ 63-3045 and 63-3046, respectively.

THEREFORE, the Notice of Deficiency Determination dated January 25, 2013 and directed to [Redacted], as MODIFIED, is hereby APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$4,798	\$1,200	\$1,215	\$7,213
			PAYMENT RECEIVED	<u>(4,798)</u>
			TOTAL DUE	<u>\$2,415</u>

Interest is calculated through October 11, 2013.

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 _____ 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.
