

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 38917
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On March 4, 2014, the Income Tax Audit Division (Audit) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] (petitioners) proposing additional income tax, penalty, and interest for taxable years 2005 through 2007, in the total amount of \$38,999.

In response to the NODD, two letters were received from the petitioners' appointed representative. Neither letter expressed an objection to the amount of additional tax assessed, but rather to the amount of time in which it took the [Redacted] ([Redacted]) to resolve the matter and that interest kept accruing during this time. Audit acknowledged the petitioners' objection and forwarded the file to the Commission's Legal/Tax Policy Division for administrative review.

The petitioners did not request a hearing and have not provided any additional documentation for the Commission's consideration. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

Idaho Code § 63-3002 states in part:

It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . .

Therefore, if the [Redacted] changed the petitioners' [Redacted] taxable income to include additional income, a corresponding adjustment must be made to the petitioners' Idaho income tax return to make Idaho taxable income identical to [Redacted] taxable income.

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 petitioner's liability. In addressing whether the petitioner 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.

THEREFORE, the Notice of Deficiency Determination dated March 3, 2014, and directed to [Redacted] and [Redacted], is hereby APPROVED and MADE FINAL.

The NODD has been paid in full therefore no demand for payment is made or necessary.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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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