

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 31137
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

A Notice of Deficiency Determination (NODD) was issued to [Redacted] (petitioner) denying the petitioner’s refund claim relating to taxable year 2008.<sup>1</sup> The petitioner had filed a refund claim seeking a refund of tax in the amount of \$3,620. The Idaho State Tax Commission’s (Commission) Taxpayer Accounting Unit (TAU) issued the NODD. The petitioner filed a timely petition for redetermination (petition). The petition was assigned to the Tax Policy Division (Appeals) to conduct the redetermination. This decision is based on the information submitted by the petitioner and a review of the TAU’s file.

**A. ISSUES**

This docket contains four issues:

1. Does the execution of [Redacted] Form 872 Consent to Extend the Time to Assess Tax also extend the Idaho Code § 63-3072 time frame to file a refund claim?
  
2. Does the filing of a [Redacted] amended return automatically extend the Idaho statute of limitations for filing an Idaho amended return or fall within the special one (1) year statute of limitations relating to the filing of a refund claim due to a “final [Redacted] determination”?

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<sup>1</sup> The petitioner filed an Idaho Form 41 group return under the name of [Redacted]. Included in the group return was the self-assessment of \$40 dollars of Idaho Code § 63-3082 tax (commonly referred to as the permanent building fund tax (PBF)) which would indicate that the group includes at least four corporations required to file an Idaho income tax return.

3. Does the CP210 notice issued by the [Redacted] and delivered to the petitioner fall within the special one (1) year statute of limitations relating to the filing of a refund claim due to a “final [Redacted] determination”?

4. If the Commission finds that the refund claim was timely filed, should the adjustments made by the petitioner to its Idaho apportionment factor be allowed?

## **B. IN GENERAL**

The petitioner filed its original Idaho Form 41 corporate income tax group return on October 8, 2009, shortly before the return’s extended due date of October 15, 2009.

The [Redacted] conducted an audit of the petitioner’s consolidated [Redacted] income tax return and on September 14, 2012, the petitioner agreed to the [Redacted] adjustments.<sup>2</sup>

On November 15, 2012, the petitioner filed an amended Idaho corporate income tax return (1<sup>st</sup> amended) to report the [Redacted] adjustments, which resulted in a small additional amount due to Idaho. The petitioner’s 1<sup>st</sup> amended return is not at issue in this docket.

During the audit of the petitioner’s [Redacted] income tax return by the [Redacted], the petitioner and the [Redacted] executed Form 872, agreeing to extend the [Redacted] statute of limitations for taxable year 2008 through October 31, 2013.<sup>3</sup> Additionally, Form 872 provided the petitioner with an opportunity to file a refund claim up to six months following the October 31, 2013, extended due date.

The petitioner filed another amended [Redacted] income tax return on October 30, 2013, and filed a corresponding amended Idaho corporate income tax return. The Commission received the petitioner’s amended Idaho corporate income tax return on December 23, 2013 (2<sup>nd</sup> amended).

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<sup>2</sup> See [Redacted] Form 870 Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment signed by petitioner on September 14, 2012.

<sup>3</sup> See [Redacted] Form 872 Consent to Extend the Time to Assess Tax signed by the petitioner on April 27, 2012.

In the second amended return, the petitioner reported the following adjustments to its consolidated [Redacted] taxable income:

1. \$2,184,564 additional deduction for retirement and medical plan expenses.
2. \$255,654 additional deduction for depreciation expenses.
3. \$7,619,766 adjustment to fix having incorrectly reported a \$3,809,883 deduction as income.
4. \$86,338 reduction in the amount of deductible wages.

The aforementioned adjustments resulted in a net \$9,973,646 decrease in the petitioner's [Redacted] consolidated taxable income. For Idaho purposes, the \$9,973,646 decrease resulted in a reduction of business income subject to apportionment in the same amount. In addition to the reduction in income subject to apportionment, the petitioner adjusted its Idaho apportionment factor by making adjustments to its Idaho receipts factor (numerator and denominator). No explanation was provided with the second amended return identifying the transactions that gave rise to the adjustments to the Idaho apportionment factor or how those adjustments related to the [Redacted] audit adjustments. It is this second amended return that is at the heart of this petition.

The second amended return refund claim was filed with the Commission more than three years from the due date for taxable year 2008 (i.e. April 15, 2012) and more than three years from the date that the original return was filed (the original return was filed in October 2009 and the second amended return was filed in December 2013). After consulting with the Commission's Income Tax Audit Bureau, on February 5, 2014, the TAU sent the petitioner a letter in which it stated:

We have disallowed your amended refund. You cannot receive refunds of taxes, penalties, or interest if you filed the amended return more than three years after the due date of the original return, more than three years after the original return was filed, or more than one year from the date of delivery of the final

[Redacted] determination (Idaho Code section 63-3072(d)). The latest of these three dates is October 15, 2012. You filed the amended return on December 23, 2013.

The petitioner responded on February 12, 2014, by providing the TAU with a copy of Form 852 extending the [Redacted] statute of limitation for taxable year 2008 through October 31, 2013. The petitioner argues that “[a]ttached is a copy of the filed [Redacted] Form 872 which extends the [Redacted] statute of limitations. Therefore, since the [Redacted] attachments enclosed support the extension of the statute, we would like this case closed and the overpayment of \$3,620 to be refunded as requested.”

The TAU responded to the petitioner’s request to approve its refund claim by issuing the NODD dated March 14, 2014, and basically repeated the position that the TAU took in its February letter.

### ANALYSIS

Idaho Code § 63-3002 in its entirety states:

63-3002. DECLARATION OF INTENT. 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 the 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; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called “taxable income” in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called “Idaho taxable income”; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

(Emphasis added).

Idaho models its state income tax on the provisions of the [Redacted] tax code relating to the measurement of taxable income. The Idaho courts noted that it was the legislature's intent that Idaho adopt some of the Internal Revenue Code provisions, but not all of the Internal Revenue Code provisions.<sup>4</sup> See Parker v. Idaho State Tax Commission, 148 Idaho 842, 849, 230 P.3d 734, 737 (2010) ([Redacted] tax law did not apply, since Idaho law contains its own provisions for equitable relief); Lockheed Martin Corporation v. Idaho State Tax Commission, 142 Idaho 790, 134 P.3d 641 (2006) (declining to adopt [Redacted] requirement that taxpayers receiving payments under long term contracts report property under construction in computing the Idaho apportionment factor, because under Idaho Code § 63-3027, property under construction is excluded).

In this instance, the issue of whether the return was timely filed is governed by Idaho law, not by the provisions found within the Internal Revenue Code. More specifically, a refund claim for overpayment of Idaho income taxes is governed by Idaho Code § 63-3072. Idaho Code § 63-3072 provides, in relevant part:

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, or amounts paid as backup withholding under section 63-3036B, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

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<sup>4</sup> Idaho Code § 63-3011B defines taxable income as “federal taxable income as determined under the Internal Revenue Code.”

(c) With regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, or amounts paid as backup withholding under section 63-3036B, Idaho Code, a claim for credit or refund shall be made within three (3) years from the due date of the return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid. However, with regard to an individual who is entitled to an extension of time as provided in section 7508 of the Internal Revenue Code, the three (3) year period provided in this subsection for claiming a credit or refund shall be extended by the number of days disregarded under section 7508 of the Internal Revenue Code.

...

(h) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

### **Issue 1**

Does the execution of [Redacted] Form 872 Consent to Extend the Time to Assess Tax also extend Idaho Code § 63-3072 timeframe to file a refund claim?

Since Idaho has its own statute governing the timing to file a refund claim, including a provision specifically governing the entering into an agreement to extend the Idaho statute of limitations, the waiver entered into between the petitioner and the [Redacted] to extend the [Redacted] statute of limitations to October 31, 2013, does not automatically extend the Idaho statute of limitations. This finding is consistent with the aforementioned decisions in Parker and Lockheed Martin. The finding is consistent with the Commission's finding in its published decision in Docket 17898, dated September 15, 2004. See at:

<http://tax.idaho.gov/decisions/0417898.pdf>.

## Issue 2

Does the filing of a [Redacted] amended return automatically extend the Idaho statute of limitations for filing an Idaho amended return or fall within the special one (1) year statute of limitations relating to the filing of a refund claim due to a “final [Redacted] determination”?

It is the Tax Commission’s position that filing a [Redacted] amended return does not automatically extend the Idaho statute of limitations. Idaho Income Tax Administrative Rule 880.08, IDAPA 35.01.01.880.08 states:

**08. Amended Federal Return.** Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer’s Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution.

Both Idaho Code sections 63-3068(f) and 63-3068(d) define the term “final [Redacted] determination” as “the final resolution of all issues which were adjusted by the internal revenue service.” Idaho Code § 63-3072(d) contains a special one year statute of limitations opening up an otherwise closed year for a refund claim due to a final [Redacted] determination. Idaho Code § 63-3072(d) states:

d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term “final federal determination” shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (b) and (h) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted

in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.  
(Emphasis added.)

Under the statutory language, a timely filed refund claim relating to a “final [Redacted] determination” is one that was filed “the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed.” Idaho Code § 63-3072(d).

As previously mentioned, the petitioner’s second amended return was filed in December of 2013, which is beyond three (3) years from the due date of the return (April 15, 2009) and beyond three years from the date the return was filed (October 2009). The third option of “one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service” requires some delivery action by the [Redacted]. Thus, simply filing a [Redacted] amended return does not, by itself, satisfy the statutory language.

### **Issue 3**

Does the CP210 notice issued by the [Redacted] notifying the petitioner that the petitioner’s account has been adjusted, fall within the aforementioned special one (1) year statute of limitations relating to the filing of a refund claim due to a “final [Redacted] determination”?

The CP210 notice is dated June 2, 2014, and is three (3) pages long. The notice informed the petitioner that the [Redacted] was adjusting the petitioner’s account; the petitioner would receive a separate notice explaining the correction; the notice was not as a result of an audit; and that the petitioner’s 2008 [Redacted] income tax return had been changed such that the petitioner’s [Redacted] income tax was decreased by \$394,090. The reduction in the petitioner’s [Redacted] income tax agrees with the amount of refund as shown on the [Redacted] amended

return attached to the second amended return. If the petitioner did, in fact, receive a separate notice explaining the corrections, that document has not been provided to the Commission.

There is no dispute that the CP210 notice was issued by the [Redacted] beyond three years from the due date of the return and beyond three years from the date the return was filed, thus making it the later of the three aforementioned statutory time periods. Additionally, there is no dispute that the petitioner's second amended return was filed within one year from date of delivery of the [Redacted] CP210 notice to the petitioner. The question in this docket is whether or not the CP210 notice constitutes a "final [Redacted] determination", as that term is defined in Idaho Code § 63-3072(d).

Idaho Code § 63-3072(d) defines a final [Redacted] determination as "the final resolution of all issues which were *adjusted* by the internal revenue service." (Emphasis added.) Neither the Idaho statute nor the Idaho Income Tax Administrative Rules provide specific guidance on what is meant by "final resolution of all issues" or "adjusted by the internal revenue service."

There is no dispute that, when the petitioner filed the second amended return with Idaho, the petitioner had filed a timely [Redacted] amended return and the [Redacted] statute of limitations was still open for the [Redacted] to audit the petitioner's [Redacted] amended return. Thus, the date of the final resolution of all issues may not have occurred. However, it has been the Commission's administrative practice of processing timely filed refund claims that have been received prior to the date that the "final resolution of **all issues**" has occurred. The question before the Commission is whether the taxing authority ([Redacted]) is required to have conducted an audit as a prerequisite to adjusting issues before it.

The meaning of a statute is a matter of law. St. Alphonsus Reg'l Med. Ctr., Inc. v. Bd. of County Comm'rs of Ada County, 146 Idaho 51, 53, 190 P.3d 870, 872 (2008). When

interpreting a statute, courts begin with the literal words of the statute. Boyd-Davis v. Macomber Law, PLLC, No. 41523, 2015 WL 301990, at \*3 (Idaho Jan. 23, 2015) (citing Williams v. Blue Cross of Idaho, 151 Idaho 515, 521, 260 P.3d 1186, 1192 (2011)). “[T]hose words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.” In re Guardianship of Doe, 157 Idaho 750, 339 P.3d 1154, 1160 (2014) (quoting A & B Irr. Dist. v. Idaho Dep’t of Water Res., 154 Idaho 652, 654, 301 P.3d 1270, 1272 (2012)).

If statutory language is clear and unambiguous, the courts need merely apply the statute without engaging in any statutory construction. Barbee v. WMA Sec., Inc., 143 Idaho 391, 394, 146 P.3d 657, 660 (2006). The court must merely apply the statute as written. Sumpter v. Holland Realty, Inc., 140 Idaho 349, 352, 93 P.3d 680, 683 (2004).

The court must give effect to a statute wherever it is possible to do so, and must keep within the terms of the language used. State v. Hahn, 92 Idaho 265, 268, 441 P.2d 714, 717 (1968). The courts have the duty not to deprive a statutory provision of its meaning. A & B Irr. Dist. v. Idaho Conservation League, 131 Idaho 411, 424, 958 P.2d 568, 581 (1997).

Courts are to follow the plain meaning and neither add to the statute nor take away from it by judicial construction, as it is for the legislature, “not the judiciary, to evaluate the wisdom or efficacy of the statutory scheme.” Rule Sales and Service, Inc. v. U.S. Bank Nat. Ass’n, 133 Idaho 669, 672-673, 991 P.2d 857, 860-861 (Ct. App. 1999) (citations omitted). Even more, “[i]t is well understood that equitable principles cannot supersede the positive enactments of the legislature.” Davis v. Idaho Dept. of Health and Welfare, 130 Idaho 469, 471, 943 P.2d 59, 61 (Ct. App. 1997).

Under the plain language of Idaho Code § 63-3072(d), “adjusted” means something different than “audited.” First, the word “adjusted” means “accommodated to suit a particular set

of circumstances or requirements”<sup>5</sup> and “[a]rranged or changed so as to match, conform, or function, especially in a specified way.”<sup>6</sup> Second, in day-to-day usage, the word “adjusted” means a change to fit a particular situation, or an alteration or modification. Said otherwise, to make an adjustment does not require a particular procedure, route or audit.

Consistent with this plain reading of the statute, here, the [Redacted] delivered a letter notifying the petitioner that “we’re making an adjustment to your account” and that the [Redacted] had “made changes to your December 31, 2008, Form 1120 the [Redacted].” (Emphasis added.) Thus, the [Redacted] notified the petitioner that the petitioner’s return had been changed because of the [Redacted] amended return and that it was making “an adjustment” as a result of the filing of the [Redacted] amended return. This activity of changing the taxpayer’s account to conform to the amended return in a specified way fits squarely within the plain meaning of the word “adjusted.”

The issues raised in the amended return were resolved through the processing of the amended return, coupled with the delivery of the CP210 letter by the [Redacted] to the petitioner, notifying the petitioner that the petitioner’s account was adjusted and the petitioner’s return for taxable year 2008 was changed. These actions, taken together, are sufficient to satisfy the statutory requirements and fall within the definition of “final [Redacted] determination.” If the [Redacted] were to conduct an audit of the petitioner’s amended return, the petitioner would be required to report the outcome of that subsequent [Redacted] audit to Idaho pursuant to Idaho Code § 63-3069.

Even if it could be argued that the use of the term “adjusted” is ambiguous, the Idaho Court provides the following guidance:

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<sup>5</sup> Merriam-Webster online dictionary at <http://www.merriam-webster.com/dictionary/adjusted>.

<sup>6</sup> The American Heritage online dictionary at <https://www.ahdictionary.com/word/search.html?q=adjusted>.

Generally, “The Idaho Income Tax Act, like all tax statutes, must be construed as favorably as possible to the taxpayer and strictly against the taxing authority.” Futura Corp. v. State Tax Comm’n, 92 Idaho 288, 291, 442 P.2d 174, 177 (1968). However, “If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer.” Potlatch Corp. v. Idaho State Tax Comm’n, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (1996).

See AIA Servs. Corp. v. Idaho State Tax Comm’n, 136 Idaho 184, 187, 30 P.3d 962, 965 (2001).

Therefore, the delivery of the CP210 notice to the petitioner by the [Redacted] informing the petitioner that the [Redacted] has “adjusted” petitioner’s account and made changes to the petitioner’s return, rather than requiring that an actual audit of the petitioner’s amended [Redacted] return by the examination unit of the [Redacted], to constitute a “final [Redacted] determination”, would be consistent with the court’s guidance.

Since the amended return was filed within one year from the date of the CP210 letter, it is the Commission’s finding that the petitioner’s refund claim falls within the special one year statute of limitations contained within Idaho Code § 63-3072(d).

#### **Issue 4**

The petitioner made the following adjustments to its Idaho apportionment factor when the petitioner filed the second amended return:

1 <sup>st</sup> Amended	2 <sup>nd</sup> Amended	Difference	
\$17,131,446	\$14,094,113	\$3,037,333	Idaho sales of services
260,059	2,305	257,754	Idaho other receipts
<u>\$17,391,505</u>	<u>\$14,096,418</u>	<u>\$3,295,087</u>	Total Change
\$21,578,212,529	\$21,433,595,591	\$144,616,938	Everywhere sales of services
317,729,586	320,905,544	(3,175,958)	Everywhere other receipts
<u>\$21,895,942,115</u>	<u>\$21,754,501,135</u>	<u>\$141,440,980</u>	Total Change

Idaho Code § 63-3072(d) provides, in part, that “Upon the expiration of the period of limitations as provided in subsections (b) and (h) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final [Redacted]

determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.”

Although the Commission requested an explanation, no explanation was provided for the changes made to the Idaho sales factor and the adjustments do not appear to be related to the adjustments contained within the final [Redacted] determination. Accordingly, the Commission, as part of this decision, reverses the petitioner’s changes to the Idaho apportionment factor, which results in an Idaho apportionment factor as reported in the 1<sup>st</sup> amended return.

The amount of refund allowable under this decision is calculated as follows:

2nd amended apportionable income	\$557,036,768
1st amended apportionment factor	0.0698%
Income apportioned to Idaho	388,812
Idaho adjustments	
Adjusted Idaho taxable income	\$388,812
Idaho tax liability	\$29,550
Idaho tax liability per 1st amended	(30,079)
Idaho adjustments	
Additional tax due or (refund)	(529)
Interest (through June 15, 2015)	(134)
Total tax due or (refund)	(\$663)

THEREFORE, the Notice of Deficiency Determination dated March 14, 2014, and directed to petitioner, is hereby MODIFIED in accordance with the provisions of this decision, and as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

The petitioner is entitled to a refund of \$663.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2015, 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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