

Petitioner.

DOCKET NO. 0-200-446-976

DECISION

██████████ (Petitioner) protested the Notice of Deficiency Determination (Notice) dated October 16, 2024. The Tax Commission reviewed the matter and hereby issues its final decision to modify the Notice.

Background

The Tax Commission's Income Tax Audit Bureau (Audit) selected Petitioner's 2021 income tax return for examination and sent a letter on March 27, 2024, requesting specific information about investments for which Petitioner claimed investment tax credit (ITC). Audit did not receive a response and so sent a second letter on May 10, requesting the same information. This letter also garnered no response, so Audit issued the Notice on October 16.

In the Notice, Audit disallowed \$18,725 of ITC carryover claimed on Petitioner's 2009 Idaho return, because Petitioner had not reported earning ITC in 2008. Audit acknowledged that Petitioner had earned ITC in 2011, 2013, and 2020, and that ITC from these years was available to carry over to 2021. Audit disallowed the ITC Petitioner claimed to have earned in 2021, because Petitioner had not responded with documentation to support the claim. Based on these adjustments, Audit determined that there was no ITC available to carry over to 2022 and disallowed the credit claimed for that year.

On December 18, a third party – who would subsequently be named as Petitioner’s attorney-in-fact (AIF) – provided this response online:

Formally filing a protest for [REDACTED] [REDACTED] for NODD related to 2021 and 2022 relating to investment tax credit claimed in prior years. The 2008 return was filed incorrectly, omitting the tax credit which would have generated a rollover to 2021 and 2022 eliminating the NODD. Working to provide amended 2008, as a prior accountant prepared this return and finding old documents. [REDACTED] [REDACTED] should qualify for the carryforward of ITC through 2022.

On December 24, Audit sent Petitioner a letter acknowledging the protest and requesting additional information by January 10, 2025. Audit did not receive a response and sent AIF an email on January 31, to inquire about the status of amended returns. The response received the same day stated that amended returns would be completed within two weeks. Not having received any amended returns, Audit sent AIF another email on February 27, asking about the status of amended returns. The response received the same day stated that an update would be forthcoming. Having received no further response, Audit sent AIF a third email on March 14, this time setting a deadline of March 21, for the amended returns. Audit stated that the matter would be forwarded to the Tax Commission's Appeals unit (Appeals) if the returns were not provided by the stated deadline. The response received the same day stated that the returns would be provided before the deadline. Having received no amended returns, Audit sent Petitioner a letter on April 17, stating that the matter was being forwarded to Appeals to continue the redetermination process.

On May 23, Appeals sent Petitioner a letter outlining the options available for redetermining a protested Notice. A response was requested by June 23. On the day of the deadline, AIF sent via email an amended 2008 Idaho income tax return, claiming ITC. Appeals received a Power of Attorney formally naming AIF as Petitioner's representative on June 25. On the same day, Appeals sent AIF an email requesting documents to support the ITC claimed on the amended 2008 return. After receiving no reply, Appeals sent AIF another email on July 16, requesting additional information for 2008 by July 25. By August 1, Appeals had not received any additional

information and so sent Petitioner a letter requesting said information by August 15. On August 18, AIF sent Appeals the requested documents via email.

On August 21, Appeals sent AIF an email with a proposed revised determination based on the information provided, explaining that there would still be an adjustment because documentation was not provided during the examination phase to support new ITC reported for 2021. Appeals requested that AIF send any additional information to be considered by August 29. On September 4, AIF provided the requested documentation for 2021.

On September 8, Appeals sent AIF an email with a proposed revised determination based on the information provided, requesting any final information by September 16. On September 22, Appeals received an email stating that AIF had nothing else to provide.

Petitioner and AIF did not request an informal hearing. Therefore, the Tax Commission must make its decision based on the information currently available.

Law & Analysis

Idaho Code section 63-3029B allows taxpayers to claim ITC equal to 3% of the value of “qualifying investments.” Qualifying investments must be used in Idaho in a trade or business, have a useful life of at least three years, be property that can be depreciated or amortized, and fall into one of these categories:

- Tangible personal property – machinery and equipment
- Other tangible property
 - Property used as an integral part of manufacturing, production, extraction
 - Furnishing transportation, communications, or utility services
 - Research facilities and bulk storage facilities used in connection with those businesses
- Elevators and escalators
- Single-purpose agricultural or horticultural structures
- Qualified timber property
- Petroleum storage facilities
- Qualified broadband equipment as approved by the Idaho Public Utilities Commission

Nonqualifying property includes, but is not necessarily limited to, the following:

- Buildings and their structural components
- Property used in lodging facilities that rent 50% or more of their lodging units for periods of 30 days or longer, such as apartment houses or rental homes
- The cost of property expensed under IRC section 179
- Used property not acquired by purchase
- The portion of property used for personal use
- Used property in excess of \$150,000 (total of all properties)
- Horses
- Property not used in Idaho
- Vehicles under 8,000 pounds gross vehicle weight
- Property previously used by the same taxpayer or an affiliate of the taxpayer

Income Tax Administrative Rule 716, *Idaho Investment Tax Credit: Record-keeping*

Requirements, reads in pertinent part:

01. Information Required. Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following:

- a. A description of the property;
- b. The asset number assigned to the item of property, if applicable;
- c. The acquisition date and date placed in service;
- d. The basis of the property;
- e. The class of the property for recovery property or the estimated useful life for nonrecovery property;
- f. The designation as new or used property;
- g. The location and utilization (the usage both in and outside Idaho) of the property;
- h. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and
- i. The reason for acquisition if acquired prior to January 1, 1995.

and also:

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed.

The amount of ITC a taxpayer can use in any tax year is limited based on several factors including the amount of credit available, the amount of tax based on income, and other credits the

taxpayer is claiming for the same year. Any unused credit can be carried forward for a limited time until it can be used. The oldest available credit should be used first.

After multiple reminders and extensions of time, AIF produced sufficient documentation to support the ITC Petitioner earned in 2008 and 2021. However, the Tax Commission determined that Petitioner had not properly recorded the use and carryover of ITC from 2008 to 2022. Going into 2021, Petitioner had available ITC carryover from prior years totaling \$44,630. Petitioner then earned an additional \$5,318 of ITC in 2021. Based on the income tax reported on Petitioner's 2021 Idaho return, \$46,234 of ITC was used in 2021, leaving \$3,714 to carry forward to 2022. Petitioner claimed \$5,404 of ITC for 2022, which is \$1,690 more than the amount available. The Tax Commission determined that the excess credit claimed must be repaid.

The Bureau added interest, a 5% negligence penalty, and a 10% substantial understatement penalty to Petitioner's tax deficiency. The Tax Commission reviewed those additions and finds the interest to be in accordance with Idaho Code section 63-3045. While the Tax Commission finds the inclusion of the negligence penalty to be appropriate and in accordance with Idaho Code section 63-3046, Petitioner's revised tax deficiency does not meet the criteria for inclusion of the substantial understatement penalty.

Conclusion

Petitioner provided documentation to support the ITC earned in 2008 and 2021. However, Petitioner did not accurately account for the amount of ITC used and carried forward into 2022.

THEREFORE, the Notice dated October 16, 2024, and directed to [REDACTED] is hereby MODIFIED and MADE FINAL.

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>
2022	\$1,690	\$85	\$110	\$1,885

The Tax Commission DEMANDS immediate payment of this amount. Interest is calculated in accordance with Idaho Code section 63-3045.

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

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2025,
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:

Receipt No.

[REDACTED]

[REDACTED]