

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
) DOCKET NOs. 0-704-718-848,
) 1-777-608-704, &
) 0-475-777-024
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Petitioners. DECISION

This is a consolidated decision from several actions.

(Petitioners) are related entities. The same attorney-in-fact is representing all three Petitioners. Petitioners appealed Notices of Deficiency Determination (Notices) dated April 27, 2020 issued by the Revenue Operations Division (Division) of the Idaho State Tax Commission (Tax Commission). The Division issued the Notices after determining Petitioners could not claim a credit for backup withholding (claimed as estimated payments) under Idaho Code section 63-3036B for tax year 2018. The Division proposed tax, penalty, and interest in the amounts of \$5,112, \$2,235, and \$1,462 for respectively.

Idaho Code section 63-3036B lists the rules for withholding, reporting, and remitting backup withholding. In pertinent part, Idaho Code section 63-3036B(1) provides a pass-through entity that is transacting business in Idaho that has income taxable in Idaho shall withhold tax for each nonresident individual owner’s share of income from the pass-through entity. Idaho Code section 63-3036B(7) provides backup withholding by a pass-through entity is not required on the income of pass-through owners who are not natural persons, including corporations, partnerships, trusts, and estates.

Income Tax Administrative Rule 877.06 provides returns and payments that fail to meet the requirements of Idaho Code section 63-3036B and Income Tax Administrative Rule 877 are invalid, and the Tax Commission may send back the returns and payments to the pass-through entity to be refiled.

Petitioners are pass-through owners of a pass-through entity that transacts business in Idaho. The pass-through entity made an error by withholding, reporting, and remitting backup withholding in accordance with Idaho Code section 63-3036B. Petitioners are not natural persons: two of the Petitioners are partnerships and one is an S-corporation. Therefore, the pass-through entity should not have withheld, reported, or remitted backup withholding under Idaho Code section 63-3036B. Accordingly, the Division refunded the backup withholding remitted by the pass-through entity back to the pass-through entity and denied the backup withholding claimed by Petitioners.

During communications with the Appeals Unit at the Tax Commission, Petitioners acknowledged that the pass-through entity erred in withholding, reporting, and remitting backup withholding. Accordingly, Petitioners conceded they did not qualify for credits for backup withholding under Idaho Code section 63-3036B. Petitioners' principal argument on appeal is this: The Tax Commission should not have assessed penalty and interest. Petitioners point out: (1) They relied on information supplied by the pass-through entity to prepare their respective returns; (2) There was reasonable cause for the underpayments of tax, and they acted in good faith; and (3) The Tax Commission had the backup withholding payments but chose to refund them.

On appeal, the Tax Commission agrees with Petitioners that no penalty shall be imposed under Idaho Code section 63-3046 with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with

respect to such portion. Therefore, the Tax Commission abates the penalty on the portion of underpayments related to the backup withholding. However, the Tax Commission does not abate the penalty on the portion unrelated to the backup withholding.

Concerning interest, the Tax Commission and the Idaho Supreme Court have taken the position that interest cannot be abated. In *Union Pacific Railroad Company v. State Tax Commission*, 105 Idaho 471, 670 P.2d 878 (1983), the Idaho Supreme Court addressed the taxpayer's requirement to pay interest, as follows:

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, Section 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. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942 (*Union Pacific*, at page 476, 670 P.2d).

According to Idaho Code section 63-3045(6)(b), "[i]nterest 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 paragraph (6)(c) of this subsection from the date prescribed for the payment of the tax."

Based on the holding in the *Union Pacific* case, and on Idaho Code section 63-3045(6)(b), the Idaho State Tax Commission has determined that if the Idaho Supreme Court has no authority to abate interest, then the Idaho State Tax Commission also lacks such authority.

THEREFORE, the Notices of Deficiency Determination dated April 27, 2020, are hereby MODIFIED, in accordance with the provisions of this decision, and are AFFIRMED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$2,251	\$2,114	\$256	\$4,621

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$843	\$1,035	\$93	\$1,971

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$658	\$586	\$75	\$1,319

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

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

DATED this _____ day of _____ 2023.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2023,
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.
