BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of [redacted] Petitioner.	)))))))	DOCKET NOS. 0-519-451-136 & 0-938-300-416 DECISION

[redacted] (Petitioner) protested the Notice of Deficiency Determination (Notice) dated June 22, 2023, and the Notice dated September 2, 2025. Petitioner disagreed with the adjustments made by the Income Tax Audit Bureau (Bureau) for tax years 2015 through 2021.[1] The Idaho State Tax Commission (Tax Commission) reviewed the matters and for the reasons stated below modifies the Notices.

BACKGROUND

Petitioner is a corporate taxpayer with its principal place of business in New York, New York. Petitioner is a provider of diversified financial services and conducts business activities through its subsidiaries within and outside Idaho. Many of Petitioner's subsidiaries are members of Federal Deposit Insurance Corporation and the Federal Reserve System. The Bureau adjusted Petitioner's apportionable income and apportionment factor, added a ten percent (10%) penalty for substantial understatement and a five percent (5%) penalty for negligence, and issued a Notice for tax years 2015 through 2018 (2015-2018 Notice).

Petitioner protested the 2015-2018 Notice and provided additional information. The Bureau acknowledged the protest and issued Petitioner a modified Notice[2] as a result of the

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[1] Docket number 0-591-451-136 is for tax years 2015 through 2018, and docket number 0-938-300-416 is for tax years 2019 through 2021.

[2] The Bureau issued a modified Notice on April 21, 2025.

information Petitioner provided.[3] Petitioner received the modified Notice but maintained their objection to the Bureau's adjustments concerning the amount of loans to be included in the property numerator and denominator of their apportionment factor.

While continuing their post-protest review for tax years 2015 through 2018, the Bureau also examined Petitioner's 2019 through 2021 Idaho returns and identified property factor issues like those adjusted in the 2015-2018 Notice. To address the property factor issues, the Bureau requested Petitioner provide their loan details. Petitioner did not provide the information requested so the Bureau summonsed Petitioner's loan details not just for tax years 2019 through 2021 but also for tax years 2015 through 2018. In response to the summons, Petitioner's representative provided the Bureau with loan details for all requested years (summonsed loan details). However, for tax years 2015 through 2018, the Bureau made no change to the corresponding Notice. For tax years 2019 through 2021, the Bureau adjusted the property numerator based on the summonsed loan details but did not use those loan details for their property denominator calculation. Instead, the Bureau compiled the property denominator by using the loans held for investment and sale as reported on Petitioner's Form 10-K (10-K loans), that was filed with the U.S. Securities and Exchange Commission. The Bureau adjusted Petitioner's apportionment factor and apportionable income and issued them a Notice for tax years 2019 through 2021 (2019-2021 Notice). Petitioner's representative protested the 2019-2021 Notice, specifically the adjustments the Bureau made to the property denominator and requested an abatement of penalties for the years under review. The Bureau acknowledged the protest and referred both matters to the Tax Commission's Appeals Unit (Appeals) for administrative review.

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[3] Only the Bureau's adjustments to the property factor in the apportionment are still in dispute.

Appeals contacted Petitioner's representative and informed them of the options available for redetermining a Notice. The representative responded but did not request an informal hearing. Instead, the representative provided additional information and clarifications regarding the loans. Having reviewed all available information, the Tax Commission hereby issues its final decision regarding docket numbers 0-519-451-136 for tax years 2015 through 2018, and 0-938-300-416 for tax years 2019 through 2021.[4]

ISSUES

There are two issues on appeal. One is regarding the apportionment factor, specifically the amount of loans to be included in the property numerator for tax years 2015 through 2018 and in the property denominator for all years under review. Another issue is the imposition of penalties: a 10% substantial understatement penalty and a 5% negligence penalty.

LAW AND ANALYSIS

Apportionment factor

In 1994, the Multistate Tax Commission (MTC) issued a recommended formula for the apportionment and allocation of net income of financial institutions (financial rule), and the Tax Commission adopted the MTC financial rule in Idaho Income Tax Administrative Rule IDAPA 35.01.01.582. The financial rule contains variations from Idaho's standard apportionment methods set forth in Idaho Code section 63-3027. Variations that are particularly significant in this case are the inclusion of intangibles, i.e. loans, in the property factor. The MTC amended the financial rule

[4] The representative agreed to combine these two dockets for administrative review.

in 2015,[5] but Idaho has not adopted the amendments. Therefore, for Idaho purposes, the definition of "financial rule" is that adopted in 1994 (old financial rule).[6]

Property numerator

Under the old financial rule, a financial institution must apportion a loan to a state where it has a preponderance of substantial contacts, i.e. solicitation, investigation, negotiation, approval, and administration, or SINAA. The old financial rule does not provide clear guidance or a method to measure "preponderance", nor does it clarify whether preponderance should be determined in each activity or in all activities. It is also not clear whether each activity should be weighed equally or differently based on the nature of each activity and its involvements, e.g., volume, time, effort, complexity, resource, etc. Because of the ambiguity in the old financial rule, the preponderance of substantive contacts is not easily determinable.

In the present cases, Petitioner owned several subsidiaries who are financial institutions. One of the issues is the assignment of loans to Idaho based on the preponderance of substantive contacts under the old financial rule. During Appeal's review, the representative explained that Petitioner's position has always been that the preponderance of substantive contacts did not occur in Idaho and therefore they are not required to assign any of their loans to Idaho. However, because of the ambiguity in the old financial rule, Petitioner recognizes that their business activities in Idaho may not be fairly represented. Therefore, to account for the flaws caused by the outdated provision, Petitioner agreed to assign loans to Idaho when the loans were associated with

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[5] The MTC's amendments in 2015 removed intangibles (loans) from the property factor calculation, which would eliminate the ambiguity in the old financial rule. However, Idaho has yet to adopt the 2015 amendment.

[6] When a financial institution issued a loan to a borrower in Idaho, if 3 or more activities out of the 5 activities occurred in another state, the old financial rule would require the financial institution to assign 100% of the loan to another state, instead of prorating the loan based on the number of activities, e.g., 60% (3 divided by 5 activities).

borrowers who were in Idaho (Idaho loans)[7] during the years under review and provided Idaho and everywhere loan details in response to the Bureau's summons (summoned loan details). Based on these summoned loan details, the Bureau included Idaho loan balances in the property numerators for tax years 2019 through 2021 but not for tax years 2015 through 2018.

For tax years 2015 through 2018, the Bureau estimated Idaho loan balances for [redacted] a wholly owned subsidiary of Petitioner, by applying the percentage of interest from loans secured by real properties in Idaho to the interest from loans secured by real properties everywhere. The Bureau multiplied this interest percentage with the "inventory" amount included in Petitioner's property denominator and treated this amount as [redacted] Idaho loans. The representative clarified in response to Appeals' request that the "inventory" consists of "power and gas inventory, oil products, and precious metals," and has nothing to do with the loans held by [redacted] The Tax Commission found that, although the "inventory" is properly included in the property denominator, it is not a relevant basis in calculating the amount of [redacted] Idaho loan balances. The Tax Commission determined that the Bureau's calculation of [redacted] Idaho loan balances is inappropriate and found those the representative provided in the summoned loan details[8] are reasonable. Therefore, the Tax Commission modifies the 2015-2018 Notice to adjust the property numerator based on the summonsed loan details, and to be consistent with the Bureau's adjustments in the 2019-2021 Notice.

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[7] For [redacted] the representative estimated loan balances for 2015 through 2017 based on a ratio of Idaho loans to everywhere loans for 2018 through 2021. The representative provided the actual loan data for the rest of the companies that had Idaho loans for 2015 through 2021.

[8] The representative's letters dated March 7, 2025, and April 15, 2025.

Property denominator

Idaho Income Tax Administrative Rule IDAPA 35.01.01.460. **Property Factor: In General**, states,

> **04. Denominator**. The denominator of the factor may not exceed the sum of all the numerators.

The denominator represents property "everywhere" and the numerator represents "in-state" property.

In the present case, the dispute regarding the property denominator concerns the amount of loan balances. To determine that amount, the Tax Commission first reviews the component of the loans. Specifically, whether a margin loan meets the definition under the old financial rule since the representative disagreed with the Bureau's exclusion of margin loans from their property denominator calculation. The Tax Commission then reviews all loans and determines what amount of loan balances should be included in Petitioner's property denominator.

Margin loans

The old financial rule defines "loans" in the subsection (k) of Section 2. Definitions.,

> "**Loan**" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account;[9] securities;[10] interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

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[9] "Assets held [by a financial institution] in a trading account" are called trading assets or held-for-trading securities. These are financial instruments, such as stocks, bonds, or derivatives, that are acquired with the intention of reselling them, rather than being held for long-term investment. They are classified as current assets and reported on the balance sheet at fair value.

[10] "Securities" held by a financial institution are tradable financial assets, such as stocks, bonds, and derivatives, that are recorded as assets on the balance sheet to generate income, manage liquidity, and hedge risk. Accounting

The Office of Comptroller of the Currency[11] defines a margin loan as a loan provided by a brokerage firm[12] and secured by an investor's securities. It allows investors to borrow funds by using their existing securities, e.g., stocks, bonds, mutual funds, etc., as collateral for them to purchase additional securities or to meet their short-term financial needs. Unlike trading assets (e.g., stocks, bonds, derivatives, etc.), a margin loan is a debt instrument that enables an investor to borrow cash from a broker. Based on this definition, the Tax Commission found that a margin loan is not an asset held in a broker's trading account; rather, it is recorded on the firm's balance sheet as a loan receivable, and as such, meets the definition of loans provided in the old financial rule and therefore must be included in the property factor.

In the present cases, the representative explained that Petitioner had two brokerage companies that provided margin loans to their customers: [redacted],[13] and [redacted].[14] For those companies, the representative provided the Idaho and everywhere margin loan balances for each year under review.

[redacted]

A review of the 2019-2021 Notice shows the Bureau included [redacted] Idaho margin loan balances in their property numerator but omitted the corresponding everywhere margin loan balances from the property denominator. This appears to stem from the Bureau's assumption that

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classifications (trading, available-for-sale, or held-to-maturity) dictate whether they are reported at fair value or amortized.

[11] The Office of the Comptroller of the Currency is an independent bureau of the U.S. Department of the Treasury that charters, regulates and supervises all national banks and federal savings associates as well as federal branches of foreign banks.

[12] A margin loan is not an asset held in a brokerage firm's trading account; rather it is a loan asset (receivable) held on the firm's balance sheet. A margin loan is secured by the investor's securities, which act as collateral, while the cash lent to the investor is recorded as a receivable.

[13] [redacted] is a disregarded entity of [redacted] who is a unitary member of Petitioner.

[14] [redacted]. is a wholly owned subsidiary of [redacted] who is a unitary member of Petitioner.

Petitioner's 10-K loans include margin loans. However, the reconciliation schedules provided by the representative show that the 10-K loans do not include any margin loans. The representative explained that, for financial accounting and reporting purposes, those margin loans must be reported as part of receivables or payables,[15] not as part of loans, in the 10-K to comply with regulatory requirements.[16] After reviewing those regulatory requirements and the representative's reconciliation schedules, the Tax Commission found the representative's explanation legitimate. Therefore, the Tax Commission modifies the 2019-2021 Notice to adjust the property denominator to include [redacted] everywhere margin loan balances based on the summonsed loan details[17] for the years under review.

[redacted]

The summonsed loan details show no [redacted] margin loan balances in Idaho, which the representative attributed to the absence of Idaho customers.[18] The representative argued that, although [redacted] had no Idaho margin loan balances, its everywhere margin loan balances must be included in the property denominator because margin lending is an integral part of Petitioner's business across all states. The representative also stated in the protest that, despite repeated requests, the Bureau never explained their exclusion of [redacted] margin loans from the property denominator. Upon review of the audit files, the Tax Commission found that the Bureau excluded

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[15] Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 310 Receivables. Margin loans are considered receivables from customer and are subject to impairment analysis under ASC Topic 310 or Topic 326, depending on the entity's size/type. The representative explained that Petitioner's margin loan balances are not easily reconcilable to the receivables/payables reported in their 10-K or Form 1120, Schedule L, since those receivables and payables would also include the amounts related to fees, interest and dividends, etc., that have nothing to do with Petitioner's margin loans.

[16] Securities Exchange Act (SEA) Rule 15c3-1 (Net capital rule) and SEA Rule 15c3-3 (Customer protest rule). Federal Reserve Board Regulation T (50% initial margin for equity), and Regulation U (bank-financed margin). Financial Industry Regulatory Authority (FINRA) 4210. Margin Requirements.

[17] The representative's letter dated April 15, 2025.

[18] The representative provided a list of city, state, and zip code for the investors who had margin loans. The list shows that none of them were in Idaho.

[redacted] margin loans from the property denominator because "the inclusion of margin loans is distortive and doesn't compute a fair representation of the business operation." The Bureau's analysis shows a comparison of [redacted] margin loan balances to the 10-K loans. When the Bureau found that [redacted] everywhere margin loan balances were larger than the 10-K loans, they deemed that the inclusion of [redacted] margin loans is "distortive." As previously noted, the 10-K loans do not include any margin loans, and therefore the Tax Commission found that the Bureau's position is not valid. A relevant analysis would compare or reconcile [redacted] everywhere margin loan balances to the receivables and payables reported on its financial statement;[19] however, the Bureau did not perform such an analysis. Therefore, the Tax Commission found that the Bureau's analysis is incorrect and their determination lacks merit.

In response to the Bureau's summons, the representative provided examples[20] of [redacted] margin loans. Their examples show that, when an investor with a margin loan holds cash and/or short positions,[21] those amounts are netted against the margin loan balance (net amount) for financial accounting and reporting purposes. A positive net amount is recorded as a "Customer Receivable" while a negative net amount is recorded as a "Customer Payable" in [redacted] financial statements. In response to Appeals' request, the representative provided the amounts of cash and short positions for several margin loans in addition to the ones they previously provided to the Bureau. The representative explained that cash and short positions do not affect the margin

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[19] The representative provided [redacted] 2021 financial statements, audited by a third-party accounting firm, in response to the Bureau's summons.
[20] These examples are based on the margin loan data of [redacted] customers.
[21] An investor borrows shares from a broker and sells them, which creates a "short" position. Short selling is a trading strategy where an investor borrows shares of a stock they believe is overvalued, sells them at the current high price and aims to buy them back later at a lower price and return the profit to the lender. (price declines).

loan principal balance[22] but must be considered when calculating the receivables and payables reported in [redacted] financial statements. The Tax Commission found that the representative's treatment of margin loan is consistent with the regulatory requirements,[23] which specify that the margin loan principal balance remains outstanding because cash and short positions are recorded as separate assets and liabilities (collateral) rather than as reductions of the margin loan principal. Therefore, the Tax Commission determined that the margin loan principal balances, without netting cash and short positions, should be included in the property denominator based on the summonsed loan details.[24]

All loans

"All loans" in this case refers to the loans that meet the definitions provided in the old financial rule. The summonsed loan details[25] provide Petitioner's loan balances for [redacted] and [redacted], along with all other subsidiaries who issued loans to their customers. The Tax Commission found the loan details relevant and appropriate as they correspond directly to the Idaho loan balances the Bureau included in the 2019-2021 Notice. Therefore, the Tax Commission

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[22] When an investor shorts a stock, the proceeds are typically deposited into their account but they are held as collateral rather than being immediately available to reduce existing margin loans. Therefore, the principal balance would not change.

[23] The U.S. Generally Accepted Accounting Principles, specifically regarding broker-dealer financial statement presentation within the FASB Accounting Standards Codification (ASC) Topic 940, Financial Services—Brokers and Dealers, margin loans and associated collateral (cash and short positions) are generally presented on a gross basis rather than automatically offsetting to change the principal loan balance. ASC 210-20 (Balance Sheet Offsetting): Establishes that for a liability (margin loan) and asset (cash/securities) to be netted, a legal right of setoff must exist. While broker-dealer agreements often provide this, they are frequently reported gross to show total leverage. FINRA Rule 4521(d) (Often referenced in financial reporting): Frequently dictates that margin accounts with net debit balances are reported gross (adding short market value to the debit balance) rather than reducing the principal balance by the cash held in the account.

[24] In response to Appeal's request, Petitioner extracted data of several margin loans (sample data), and the representative provided a breakout of margin loan principal, cash and short position for those margin loans. In the process of extracting the sample data, Petitioner found minor errors in the summonsed loan details. The representative provided Appeals with the corrected margin loan principal balances.

[25] The representative's letter dated March 7, 2025.

modifies the 2019-2021 Notice to include all loan balances, not just for [redacted] and [redacted], but also for all other subsidiaries.

As for tax years 2015 through 2018, the Tax Commission reviewed the Notice and found that the Bureau did not include any loans in the property denominator. Therefore, the Tax Commission modifies the 2015-2018 Notice to include the everywhere loan balances shown in the summoned information.

Penalty abatement

In the protest, the representative requested abatement of the penalties asserted by the Bureau: a 10% penalty for substantial understatement and a 5% penalty for negligence.

The substantial understatement penalty is set forth in Idaho Code section 63-3046(d), which states in relevant part:

> (1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent (10%) of the amount of any underpayment attributable to such understatement.
>
> (2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:
> (i) Ten percent (10%) of the tax required to be shown on the return for the taxable year, or
> (ii) Five thousand dollars ($5,000).
>
> (4) For purposes of paragraph (d)(2) of this section, the term "understatement" means the excess of:
> (i) The amount of tax required to be shown on the return for the taxable year, over
> (ii) The amount of the tax imposed which is shown on the return.

The computation of the amount of the understatement of tax and the determination that it is substantial are mechanical processes under subsections (2) and (4) of the quoted subsection.

As for the negligence penalty, Idaho Code section 63-3046(a) states,

> If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition

> to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

Tax Administration and Enforcement Rule IDAPA 35.02.01.410.02., further clarifies that, [a] five percent (5%) negligence penalty shall be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations.

Idaho Code section 63-3046(d)(7) which is applicable not just to the substantial understatement penalty but also to the negligence penalty, states:

> [t]he state tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

Substantial understatement

The primary issue in both cases concerns the apportionment of loans in the property factor under the old financial rule. The Tax Commission reviewed the loan details provided by the representative and found that Petitioner applied their best effort to effectuate an equitable apportionment of their income by applying an alternative method[26] despite the ambiguity in the old financial rule. Therefore, the Tax Commission determined that there was reasonable cause for the understatement (or part thereof) and that Petitioner acted in good faith.

Negligence

Tax Commission Administration and Enforcement Rule IDAPA 35.02.01.410.02., under its subsections a. through l., describes the "situations that justify the penalty." Although IDAPA 35.02.01.410.04., clarifies, "A good record for filing and paying tax on returns filed annually is

[26] Idaho Code section 63-3027(s) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the state tax commission may require, in respect to all or any part of the taxpayer's business activity, if reasonable: (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

not by itself a sufficient reason to waive the penalty", the said rule section also requires the Tax Commission to consider "the taxpayer's record for filing and paying state taxes." The representative argued in the protest that Petitioner has diligently prepared and timely filed its Idaho tax returns and requested the Tax Commission consider that Petitioner was cooperative during the audit review. The Tax Commission reviewed Petitioner's records and found that the adjustments in the Notices are not because of Petitioner's continuous errors or unsubstantiated deductions. Petitioner maintained proper records and provided them as the Bureau requested during the audit. Therefore, the Tax Commission determined that Petitioner did not meet any of the situations that justify the negligence penalty.

CONCLUSION

The Tax Commission modifies the 2015-2018 Notice to include all loan balances in Petitioner's property numerator and denominator. Additionally, the Tax Commission modifies the 2019-2021 Notice, adjusting the everywhere loan balances to include margin loan balances.[27]

The Bureau added penalties and interest to Petitioner's Idaho tax. The Tax Commission found the addition of penalties, for substantial understatement and negligence, inappropriate and therefore modifies the Notices to abate both penalties. As for the addition of interest, the Tax Commission found it appropriate and in accordance with Idaho Code section 63-3045.

THEREFORE, the Tax Commission MODIFIES the Notice dated April 21, 2025,[28] and the Notice dated September 2, 2025, directed to Petitioner.

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[27] [redacted] The representative's letter dated April 15, 2025, and [redacted] Petitioner's Declaration letter, received on February 25, 2026.
[28] The Bureau originally issued the 2015-2018 Notice on June 22, 2023, and subsequently modified it on April 21, 2025.

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

YEAR	TAX/(REFUND)	PENALTY	INTEREST	TOTAL
2015	$(58,716)	$0	$(25,259)	$(83,975)
2016[29]	(29,265)	0	(13,582)	(42,847)
2017	(94,484)	0	(34,043)	(128,527)
2018	81,880	0	14,388	96,268
2019	(65,408)	0	(15,214)	(80,622)
2020	(8,286)	0	(1,699)	(9,985)
2021	(55,249)	0	(10,051)	(65,300)
		Less: Payment Received		(8,056)
			REFUND	$(323,044)

The Tax Commission DEMANDS immediate payment of this amount. Interest is calculated in accordance with Idaho Code section 63-3-45.

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

DATED this _______ day of ________________________ 2026.

IDAHO STATE TAX COMMISSION

[29] Interest for tax year 2016 includes $2,076 refund interest for $8,056 payment received on August 10, 2020.

CERTIFICATE OF SERVICE

I hereby certify that on this ________ day of ______________________________ 2026, 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]

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[redacted]