

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 362

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXES; AMENDING SECTION 63-3045, IDAHO CODE, TO PROVIDE FOR
2 MAILING NOTICES OF DEFICIENCY DETERMINATION BY FIRST CLASS MAIL RATHER
3 THAN BY REGISTERED OR CERTIFIED MAIL AND TO MAKE TECHNICAL CORREC-
4 TIONS; AMENDING SECTION 63-3061A, IDAHO CODE, TO PROVIDE FOR MAILING OF
5 NOTICES OF LEVY AND DISTRAINT BY FIRST CLASS MAIL RATHER THAN BY REGIS-
6 TERED OR CERTIFIED MAIL; REPEALING SECTIONS 63-3045 AND 63-3061A, IDAHO
7 CODE, RELATING TO NOTICE OF REDETERMINATION OR DEFICIENCY AND NOTICE OF
8 LEVY AND DISTRAINT; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE
9 ADDITION OF A NEW SECTION 63-3045, IDAHO CODE, TO PROVIDE FOR A NOTICE
10 OF REDETERMINATION OR DEFICIENCY; AMENDING CHAPTER 30, TITLE 63, IDAHO
11 CODE, BY THE ADDITION OF A NEW SECTION 63-3061A, IDAHO CODE, TO PROVIDE
12 FOR NOTICE OF LEVY AND DISTRAINT; AND PROVIDING EFFECTIVE DATES.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 63-3045, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.

18 (1) (a) If, in the case of any taxpayer, the state tax commission de-
19 termines that there is a deficiency in respect of the tax imposed by
20 this title, the state tax commission shall, immediately upon discovery
21 thereof, send notice of such deficiency to the taxpayer by ~~registered~~
22 ~~or certified~~ first class mail or by other commercial delivery service
23 providing proof of delivery, whichever is the most cost efficient. The
24 notice shall be sent to the taxpayer's last address known to the state
25 tax commission. The notice of deficiency shall be accompanied by an
26 explanation of the specific reason for the determination and an expla-
27 nation of the taxpayer's right to appeal. Within sixty-three (63) days
28 after such notice is mailed, the taxpayer may, at his option, file a
29 protest in writing with the state tax commission and obtain redetermi-
30 nation of the deficiency.

31 (b) If the taxpayer files a protest with the state tax commission within
32 the period set forth in subsection (1) (a) of this section, and such
33 protest does not comply with the rules of the state tax commission and
34 is therefore inadequate to perfect the taxpayer's right to a redetermi-
35 nation of the deficiency determination, then, the state tax commission
36 shall notify the taxpayer, in the same manner as set forth in subsection
37 (1) (a) of this section, of such inadequacies, setting forth in said
38 notice the corrective action to be taken by the taxpayer to perfect his
39 protest. The taxpayer shall thereafter have twenty-eight (28) days
40 from the date of said notice to perfect his protest.

41 (c) No assessment of a deficiency in respect to the tax imposed by this
42 chapter, and no distraint or proceedings in court for its collection

1 shall be made, begun, or prosecuted until such notice has been mailed
2 to the taxpayer, nor until all appeal rights relating to the deficiency
3 have become final.

4 (2) Following a protest, the taxpayer has the right to a hearing. The
5 purpose of the hearing is to discuss the deficiency determination and the
6 taxpayer's protest with a commissioner or duly authorized representative of
7 the commission. The meeting shall be held informally and evidence shall be
8 freely admitted regardless of the rules of evidence.

9 (3) Any hearing conducted under the provisions of this section may be
10 conducted, in whole or in part, by telephone, television, or other elec-
11 tronic means, if each participant in the hearing has an opportunity to
12 participate in the entire proceeding while it is taking place.

13 (4) A taxpayer has the right to be represented by, or be accompanied by,
14 any person of his choice in any proceeding before the tax commission. If the
15 taxpayer is not present at a proceeding, the representative of that taxpayer
16 must be designated in writing by the taxpayer as shall be prescribed in ad-
17 ministrative rules or in any manner acceptable to the tax commission.

18 (5) If the taxpayer does not file a protest with the state tax commis-
19 sion within the time prescribed in subsection (1) (a) of this section, the de-
20 ficiency shall be assessed and shall become due and payable upon notice and
21 demand from the state tax commission.

22 (6) (a) Interest shall apply to deficiencies in tax and refunds of tax.
23 Interest shall not apply to any penalty or to unpaid accrued interest.
24 Interest relating to deficiencies or refunds accruing after the origi-
25 nal due date of the return, but not including extensions of the due date,
26 shall be computed on the net of any underpayments and overpayments of a
27 tax liability required to be shown as due on the same return.

28 (b) Interest upon any deficiency shall be assessed at the same time as
29 the deficiency, shall be due and payable upon notice and demand from the
30 state tax commission and shall be collected as a part of the tax at the
31 rate per annum determined under the provisions of subsection (6) (c) of
32 this section from the date prescribed for the payment of the tax. In
33 the event any of the deficiency is reduced by reason of a carryback of a
34 net operating loss or a capital loss carryback, such reduction in defi-
35 ciency shall not affect the computation of interest under this subsec-
36 tion for the period ending with the last day of the taxable year in which
37 the net operating loss or capital loss arises.

38 (c) The rate of interest accruing during any calendar year, or por-
39 tion thereof, upon any deficiency, or payable upon an overpayment or
40 refund shall be two percent (2%) plus the rate determined under section
41 1274(d), Internal Revenue Code, by the secretary of the treasury of the
42 United States as the midterm federal rate as it applies on September 15
43 of the immediately preceding calendar year rounded to the nearest whole
44 number.

45 (7) When the time provisions contained in this section conflict with
46 the provisions of section 63-4208, Idaho Code, relating to the assessment of
47 taxes on illegal possession of controlled substances, the provisions of sec-
48 tion 63-4208, Idaho Code, shall prevail.

49 SECTION 2. That Section 63-3061A, Idaho Code, be, and the same is hereby
50 amended to read as follows:

1 63-3061A. NOTICE OF LEVY AND DISTRAINT. (1) The state tax commission
2 shall, at the time of levy, provide to the taxpayer and to any person in pos-
3 session of the property subject to distraint, written notice of levy and dis-
4 traint. The written notice of levy and distraint may be:

5 (a) Given in person;

6 (b) Left at the dwelling place or usual place of business of such per-
7 son; or

8 (c) Sent by ~~certified~~ first class mail to such person's last known ad-
9 dress.

10 (2) Service may be made by other means, including electronic means
11 as provided in chapter 50, title 28, Idaho Code, the uniform electronic
12 transactions act, when agreed upon by the state tax commission and the party
13 served.

14 SECTION 3. That Sections 63-3045 and 63-3061A, Idaho Code, be, and the
15 same are hereby repealed.

16 SECTION 4. That Chapter 30, Title 63, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 63-3045, Idaho Code, and to read as follows:

19 63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.

20 (1) (a) If, in the case of any taxpayer, the state tax commission de-
21 termines that there is a deficiency in respect of the tax imposed by
22 this title, the state tax commission shall, immediately upon discovery
23 thereof, send notice of such deficiency to the taxpayer by registered or
24 certified mail or by other commercial delivery service providing proof
25 of delivery, whichever is the most cost efficient. The notice shall be
26 sent to the taxpayer's last address known to the state tax commission.
27 The notice of deficiency shall be accompanied by an explanation of the
28 specific reason for the determination and an explanation of the tax-
29 payer's right to appeal. Within sixty-three (63) days after such notice
30 is mailed, the taxpayer may, at his option, file a protest in writing
31 with the state tax commission and obtain redetermination of the defi-
32 ciency.

33 (b) If the taxpayer files a protest with the state tax commission within
34 the period set forth in subsection (1)(a) of this section, and such
35 protest does not comply with the rules of the state tax commission and
36 is therefore inadequate to perfect the taxpayer's right to a redetermi-
37 nation of the deficiency determination, then, the state tax commission
38 shall notify the taxpayer, in the same manner as set forth in subsection
39 (1)(a) of this section, of such inadequacies, setting forth in said
40 notice the corrective action to be taken by the taxpayer to perfect his
41 protest. The taxpayer shall thereafter have twenty-eight (28) days
42 from the date of said notice to perfect his protest.

43 (c) No assessment of a deficiency in respect to the tax imposed by this
44 chapter, and no distraint or proceedings in court for its collection
45 shall be made, begun, or prosecuted until such notice has been mailed
46 to the taxpayer, nor until all appeal rights relating to the deficiency
47 have become final.

1 (2) Following a protest, the taxpayer has the right to a hearing. The
2 purpose of the hearing is to discuss the deficiency determination and the
3 taxpayer's protest with a commissioner or duly authorized representative of
4 the commission. The meeting shall be held informally and evidence shall be
5 freely admitted regardless of the rules of evidence.

6 (3) Any hearing conducted under the provisions of this section may be
7 conducted, in whole or in part, by telephone, television, or other elec-
8 tronic means, if each participant in the hearing has an opportunity to
9 participate in the entire proceeding while it is taking place.

10 (4) A taxpayer has the right to be represented by, or be accompanied by,
11 any person of his choice in any proceeding before the tax commission. If the
12 taxpayer is not present at a proceeding, the representative of that taxpayer
13 must be designated in writing by the taxpayer as shall be prescribed in ad-
14 ministrative rules or in any manner acceptable to the tax commission.

15 (5) If the taxpayer does not file a protest with the state tax commis-
16 sion within the time prescribed in subsection (1) (a) of this section, the de-
17 ficiency shall be assessed and shall become due and payable upon notice and
18 demand from the state tax commission.

19 (6) (a) Interest shall apply to deficiencies in tax and refunds of tax.
20 Interest shall not apply to any penalty or to unpaid accrued interest.
21 Interest relating to deficiencies or refunds accruing after the origi-
22 nal due date of the return, but not including extensions of the due date,
23 shall be computed on the net of any underpayments and overpayments of a
24 tax liability required to be shown as due on the same return.

25 (b) Interest upon any deficiency shall be assessed at the same time as
26 the deficiency, shall be due and payable upon notice and demand from the
27 state tax commission and shall be collected as a part of the tax at the
28 rate per annum determined under the provisions of subsection (6) (c) of
29 this section from the date prescribed for the payment of the tax. In
30 the event any of the deficiency is reduced by reason of a carryback of a
31 net operating loss or a capital loss carryback, such reduction in defi-
32 ciency shall not affect the computation of interest under this subsec-
33 tion for the period ending with the last day of the taxable year in which
34 the net operating loss or capital loss arises.

35 (c) The rate of interest accruing during any calendar year, or por-
36 tion thereof, upon any deficiency, or payable upon an overpayment or
37 refund shall be two percent (2%) plus the rate determined under section
38 1274(d), Internal Revenue Code, by the secretary of the treasury of the
39 United States as the midterm federal rate as it applies on September 15
40 of the immediately preceding calendar year rounded to the nearest whole
41 number.

42 (7) When the time provisions contained in this section conflict with
43 the provisions of section 63-4208, Idaho Code, relating to the assessment of
44 taxes on illegal possession of controlled substances, the provisions of sec-
45 tion 63-4208, Idaho Code, shall prevail.

46 SECTION 5. That Chapter 30, Title 63, Idaho Code, be, and the same is
47 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
48 ignated as Section 63-3061A, Idaho Code, and to read as follows:

1 63-3061A. NOTICE OF LEVY AND DISTRAINT. (1) The state tax commission
2 shall, at the time of levy, provide to the taxpayer and to any person in pos-
3 session of the property subject to distraint, written notice of levy and dis-
4 traint. The written notice of levy and distraint may be:

5 (a) Given in person;

6 (b) Left at the dwelling place or usual place of business of such per-
7 son; or

8 (c) Sent by certified mail to such person's last known address.

9 (2) Service may be made by other means, including electronic means
10 as provided in chapter 50, title 28, Idaho Code, the uniform electronic
11 transactions act, when agreed upon by the state tax commission and the party
12 served.

13 SECTION 6. Sections 1 and 2 of this act shall be in full force and effect
14 on and after July 1, 2012. Sections 3, 4 and 5 of this act shall be in full
15 force and effect on and after July 1, 2013.