

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 24

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXES; AMENDING SECTION 63-3045, IDAHO CODE, TO ESTABLISH AN IN-
2 DEPENDENT APPEALS PROCESS, TO REVISE PROCEDURES FOLLOWING A PROTEST AND
3 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3045B, IDAHO CODE,
4 TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS;
5 DECLARING AN EMERGENCY AND PROVIDING APPLICATION.
6

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

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

10 63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.

11 (1) (a) If, in the case of any taxpayer, the state tax commission de-
12 termines that there is a deficiency in respect of the tax imposed by
13 this title, the state tax commission shall, immediately upon discovery
14 thereof, send notice of such deficiency to the taxpayer by first class
15 mail or by other commercial delivery service providing proof of deliv-
16 ery, whichever is the most cost efficient. The notice shall be sent
17 to the taxpayer's last address known to the state tax commission. The
18 notice of deficiency shall be accompanied by an explanation of the spe-
19 cific reason for the determination and an explanation of the taxpayer's
20 right to appeal. Within sixty-three (63) days after such notice is
21 mailed, the taxpayer may, at his option, file a protest in writing with
22 the state tax commission and obtain redetermination of the deficiency.

23 (b) If the taxpayer files a protest with the state tax commission within
24 the period set forth in ~~subsection (1) paragraph~~ (a) of this subsection,
25 and such protest does not comply with the rules of the state tax commis-
26 sion and is therefore inadequate to perfect the taxpayer's right to a
27 redetermination of the deficiency determination, then, the state tax
28 commission shall notify the taxpayer, in the same manner as set forth
29 in ~~subsection (1) paragraph~~ (a) of this subsection, of such inadequa-
30 cies, setting forth in said notice the corrective action to be taken
31 by the taxpayer to perfect his protest. The taxpayer shall thereafter
32 have twenty-eight (28) days from the date of said notice to perfect his
33 protest.

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

39 (2) (a) Following a protest, the taxpayer has the right to an independ-
40 ent administrative redetermination of the originating division's de-
41 termination before the state tax commission, including a hearing. The
42 purpose of the hearing is to discuss the deficiency determination and

1 the taxpayer's protest with a commissioner or duly authorized represen-
2 tative of the commission. The meeting shall be held informally and evi-
3 dence shall be freely admitted regardless of the rules of evidence.

4 (b) Tax commission staff assigned to the administrative redetermi-
5 nation may not engage in communications relating to the taxpayer's
6 protest with employees of the originating division without first
7 providing the taxpayer the opportunity to participate, except for ques-
8 tions that involve ministerial, administrative or procedural matters
9 that do not address the substance of the issues or positions taken in the
10 case or as otherwise allowed under title 63, Idaho Code, and the rules
11 promulgated thereunder. The state tax commission shall promulgate
12 rules governing communications with the originating division to ensure
13 an independent review process. The provisions of this subsection do
14 not create a substantive right affecting the taxpayer's tax liability
15 or the state tax commission's ability to determine, assess or collect
16 that tax liability, including statutory interest and any penalties, if
17 applicable.

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

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

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

31 (6) (a) Interest shall apply to deficiencies in tax and refunds of tax.
32 Interest shall not apply to any penalty or to unpaid accrued interest.
33 Interest relating to deficiencies or refunds accruing after the origi-
34 nal due date of the return, but not including extensions of the due date,
35 shall be computed on the net of any underpayments and overpayments of a
36 tax liability required to be shown as due on the same return.

37 (b) Interest upon any deficiency shall be assessed at the same time as
38 the deficiency, shall be due and payable upon notice and demand from
39 the state tax commission and shall be collected as a part of the tax at
40 the rate per annum determined under the provisions of ~~subsection (6)~~
41 paragraph (c) of this subsection from the date prescribed for the pay-
42 ment of the tax. In the event any of the deficiency is reduced by reason
43 of a carryback of a net operating loss or a capital loss carryback, such
44 reduction in deficiency shall not affect the computation of interest
45 under this subsection for the period ending with the last day of the tax-
46 able year in which the net operating loss or capital loss arises.

47 (c) The rate of interest accruing during any calendar year, or portion
48 thereof, upon any deficiency, or payable upon an overpayment or re-
49 fund, shall be two percent (2%) plus the rate determined under section
50 1274(d), Internal Revenue Code, by the secretary of the treasury of the

1 United States as the midterm federal rate as it applies on September 15
 2 of the immediately preceding calendar year rounded to the nearest whole
 3 number.

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

8 SECTION 2. That Section 63-3045B, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 63-3045B. FINAL DECISIONS OF THE COMMISSION. (1) If a taxpayer does
 11 not file a protest within the sixty-three (63) day period allowed, the no-
 12 tice of deficiency of the tax commission becomes final on the day following
 13 the end of the protest period.

14 (2) If a taxpayer files a protest, but does not perfect the protest, re-
 15 quest a hearing, or does not submit additional evidence or documentation,
 16 or does not request additional time in which to respond, the notice of defi-
 17 ciency of the tax commission becomes final on the twenty-ninth day following
 18 the date the tax commission notified the taxpayer that the protest was not
 19 perfected, except that the tax commission may reduce the amount of the defi-
 20 ciency during the twenty-nine (29) day period.

21 (3) When a perfected protest has been filed, the state tax com-
 22 mission shall, within fourteen (14) days thereof, provide the taxpayer
 23 with a written ~~acknowledgement~~ acknowledgment of the protest. After the
 24 ~~acknowledgement~~ acknowledgment, a final decision of the tax commission must
 25 be rendered within one hundred eighty (180) days from either:

26 (a) A request in writing, in a form prescribed by rules of the tax com-
 27 mission, from the taxpayer for a final decision on that issue; if the
 28 taxpayer requests such a decision, the tax commission may refuse to ac-
 29 cept additional evidence or documentation or refuse to allow an appear-
 30 ance at any proceeding with the commission or any representative of the
 31 commission during such one hundred eighty (180) day period; or

32 (b) The conclusion of any hearing pursuant to section 63-3045(2) (a),
 33 Idaho Code, and the taxpayer has not requested or received any extension
 34 of time to present additional evidence or testimony.

35 (4) A final decision may be held in abeyance, notwithstanding the re-
 36 quirements of subsection (3) of this section, with the prior approval in
 37 writing of the taxpayer.

38 (5) If a final decision of the tax commission is not rendered or the
 39 protest is not resolved by compromise, consent or withdrawal of the notice of
 40 deficiency determination within the time limits established by subsection
 41 (3) of this section, the notice of deficiency shall be null and void ab ini-
 42 tio, with prejudice.

43 (6) A final decision of the tax commission shall be issued in writ-
 44 ing and mailed or served upon the taxpayer within the time limits set forth
 45 herein. The final written decision of the tax commission shall, one hundred
 46 twenty (120) days after the date of the final written decision, be available
 47 for public inspection and copying pursuant to the provisions of section
 48 74-102, Idaho Code, except:

1 (a) The taxpayer's name, address, taxpayer identification number, so-
2 cial security number, permit number, or other identifying information
3 shall be removed from the final written decision of the tax commission
4 that is made available to the public; and

5 (b) Any proprietary or other identifying information contained in the
6 written decision that the taxpayer requests be excised shall be excised
7 by the tax commission in the final written decision made available
8 to the public. The taxpayer must make such request in writing before
9 ninety-one (91) days have elapsed after the date of the final decision.

10 (7) The tax commission shall label each written decision with a unique
11 identification number and shall keep a list containing each decision num-
12 ber and the date of issuance, as excised in accordance with the provisions
13 of this section. A decision shall serve as precedent for the tax commis-
14 sion in future protest determinations unless information excised, court de-
15 cisions, changes in the Idaho Code, or changes in applicable administrative
16 rules overrule, supersede, modify, distinguish, or otherwise make inappli-
17 cable the written decision of the tax commission.

18 SECTION 3. An emergency existing therefor, which emergency is hereby
19 declared to exist, this act shall be in full force and effect on and after its
20 passage and approval, and shall apply to protests received on or after July
21 1, 2017.