

IDAHO TAX PROCEDURE

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Audit Process

- The Tax Commission is authorized to examine books and witnesses for the following purposes:
 - 1) To ascertain the correctness of the return
 - 2) To make a substitute return where none has been filed
 - 3) To determine the liability of any person for any tax payable under Idaho's tax statutes.
 - 4) Collecting any tax liability
- The Tax Commission may summon the taxpayer to present physical evidence or testimony and may summon any person with custody of the taxpayer's records to present such records.

§ 63-3042*

§ 63-3042 (b)

**All cited code sections refer to Idaho Code, all cited rules starting with "Rule" refers to the Tax Commission's Income Tax Rules, and any cited rules starting with "Ad. Rule" refers to the Tax Commission's Administrative Rules.*

Notice of Deficiency Determination

- When the Tax Commission determines that deficiency exists, it sends a Notice of Deficiency Determination—typically called a NODD—to the taxpayer.
- While the receipt of the NODD is not an assessment of tax liability, if the taxpayer does not protest the NODD within 63 days, the deficiency becomes an assessed tax liability.
- Internally the Tax Commission refers to an unprotested NODD that are older than 63 as a “hardened” NODD.
- There is no statutorily prescribed method for challenging a hardened NODD.

§ 63-3045 (1)(a)

§ 63-3045 (5)

Filing a Protest

- A Protest to a NODD must be in writing and must be filed within 63 days from the date the NODD was mailed. A protest must:
 - 1) State the name, address, and social security number / employer identification number of the taxpayer;
 - 2) State the tax years at issue;
 - 3) Specify the items from the NODD which the taxpayer is protesting;
 - 4) State the factual and legal basis for the objection being made.
- If a protest lacks any of the required information, the Tax Commission notifies the taxpayer that their protest is not perfected. From the date this notice is mailed, the taxpayer has 28 days to perfect their protest.
- Once a perfected protest is filed, the taxpayer may request a hearing, submit additional evidence, or request a final decision.

§ 63-3045 (1)
Rule 320.01 – 4

§ 63-3045 (1)(b)
Rule 320.04

Rule 320.05

Informal Hearings

- The taxpayer has a right to an informal hearing to discuss the deficiency determination and the taxpayer's protest.
- Internally, the Tax Commission assigns these cases to a Tax Appeals Specialist or a Deputy Attorney General to further develop the case and work with the Taxpayer prior to and following the informal hearing.
- A Tax Commissioner, or their designee, conducts the informal hearing.
- Informal hearings are typically conducted in conference rooms and taxpayers are encouraged to bring evidence with them.
- The Tax Commission may consider any evidence that the Taxpayer may wish to present. Informal hearings are not governed by Idaho Rules of Evidence.

§63-3045 (2)

Ad. Rule 325.02

Resolving the Protest

- The taxpayer may, at any time prior to the issuance of a Decision, withdraw the protest. In such cases, the amount of tax and penalty shown on the NODD will be assessed against the Taxpayer with interest.
- The Commission may, at any time prior to the issuance of a Decision, withdraw its Notice of Deficiency. Such a withdrawal is only made if the taxpayer has proven to the Tax Commission that the NODD was incorrect and no additional tax should be due.
- In cases where the Tax Commission and taxpayer agree that there is a deficiency and agree that the correct amount of tax due is less than the amount shown on the NODD, the taxpayer and Tax Commission can resolve the protest by entering into a closing agreement. Please note: A **closing** agreement is different from a **settlement** agreement.

(cont.)

§ 63-3045 &
§ 63-3045B(5)

§ 63-3048

Resolving the Protest *(cont.)*

- The Commission is authorized to settle protested cases if one of the following circumstances exist:
 1. **Disputed Liability** is a reasonable disagreement as to the existence or amount of the correct tax liability under the law. Such an offer is generally acceptable if it reasonably reflects the likelihood of the Tax Commission collecting through litigation, taking into account the hazards and costs of litigation.
 2. **Doubt as to Collectability** exists when the taxpayer's assets and income may not satisfy the full amount of the liability. A settlement may be acceptable if it is unlikely that the full tax, penalty, and interest can be collected and the offer fairly matches the amount of the liability that can be collected.

(cont.)

§ 63-3048
Ad. Rule 500.01 (a)

Ad. Rule 500.01 (b)

Resolving the Protest *(cont.)*

3. **Economic Hardship of the Taxpayer** exists when, while full collection could be achieved, full collection of the amount would cause the taxpayer to be unable to pay basic living expenses. Generally, a settlement based on economic hardship may be accepted when the amount offered reflects the amount the Commission reasonably could collect without causing economic hardship.
4. **The Promotion of Effective Tax Administration** is a catchall settlement provision permitting the Tax Commission to settle in order to promote compelling public policy or equity considerations. Such settlement are only justified where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax law is administered in a fair and equitable manner.

Ad. Rule 500.01 (c)

Ad. Rule 500.01 (d)

Internal Settlement Procedures

- Before Tax Commission may enter into a settlement agreement equal to or greater than \$50,000, it must conduct a final review. This final review must be made by two commissioners, a deputy attorney general, a tax appeals specialist, and the audit staff.
- If the amount at issue is equal to or greater than \$50,000, two commissioners must sign the settlement agreement.
- While not required by statute, the Tax Commission internally circulates settlement agreements to all four commissioners for review.

§ 63-3048(b)
Ad. Rule 501.02

§ 63-3048(b)(1)

Final Decisions

- If the tax deficiency is not resolved by other means, the Tax Commission will issue a final decision in writing.
- In deficiency cases, the final decision sets forth the facts and law relied upon by the Tax Commission and asserts the tax, penalty, and interest that the taxpayer owes.
- In refund cases, the final decision will set out the facts and law relied upon and will specify the amount of refund that the Tax Commission owes.
- Final decisions are precedent setting for the Tax Commission and may be relied on by taxpayers.
- Internally, the Tax Commission circulates each decision for review by all four commissioners before the decision is issued.
- Prior to publication, taxpayers are given a chance to redact identifying information from any decision.

§ 63-3045B(6)

Appealing a Decision

- For income tax cases, when the amount at issue is less than \$25,000, a Tax Commission decision may be reviewed by either an Idaho state district court or by the Idaho Board of Tax Appeals; otherwise the case may only be reviewed by an Idaho state district court.
- For cases arising from all other tax-types, any case may be appealed to either the Board of Tax Appeals or Idaho state district court.
- Any appeal must be made within 91 days of the mailing of the decision.
- Before making an appeal, the taxpayer must make a cash deposit with the Tax Commission equaling 20% of the total amount that the Tax Commission asserts is due in the decision.

§ 63-3049 (a)

§ 63-3049 (a)

§ 63-3049 (a)

§ 63-3049 (b)

The Board of Tax Appeal

- The Board of Tax Appeals (BTA) is wholly separate and independent from the Tax Commission. § 63-3801
- The parties may supply written briefs to the BTA on or before the hearing date and the parties may bring any evidence they wish to present at the hearing. No formal discovery process is required prior to a hearing.
- A board member of the BTA or a designated hearing officer will hear the appeal. § 63-3809
- The BTA will issue a decision which, if not appealed, becomes a final decision. § 63-3813
- Any party aggrieved by a decision of the BTA may appeal the decision to an Idaho state district court. § 63-3812
- Such an appeal may be based upon any issue presented to the BTA with the party appealing bearing the burden of proof to show—upon a preponderance of evidence—that the BTA decision is erroneous. § 63-3812

The District Court & Beyond

- A Tax Commission decision may be reviewed in an Idaho state district court.
- An appeal is initiated by the taxpayer filing a complaint and summons.
- The case proceeds as any other civil case, though the case will proceed as a bench trial and may be heard by the judge in chambers.
- Any party to the proceedings may appeal the judgment of the district court to the Idaho Supreme Court.
- The Tax Commission may settle a court case using the same mechanism in place for settling a protested NODD.

§ 63-3049 (a)

§ 63-3049 (a)

§ 63-3049 (a)

§ 63-3049 (c)

Sundry Items

- In order to represent a taxpayer before the Tax Commission, a representative must be authorized by the taxpayer, in writing. While use of the Tax Commission's power of attorney form is not required, it is encouraged.
- Generally speaking, any refunds or liability owed for any particular tax year must be claimed within three years of the filing of a return for that tax year. Filing an amended state or federal return restarts the three year statute of limitation.

§ 63-3077 (a)(3)

§ 63-3068

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