

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16981
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On November 4, 2002, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for refund of Idaho individual income taxes of \$491 for the period ending December 31, 1996.

The taxpayer filed a timely protest and petition for redetermination of the refund denial. He did not request a hearing. The Tax Commission has reviewed the file, is advised of its contents and hereby issues its decision.

When Tax Commission records showed no evidence the taxpayer's 1996 Idaho income tax return had been filed, the Tax Discovery Bureau contacted the taxpayer. The taxpayer responded by providing a copy of his signed and dated return, which reflected a refund due to the taxpayer. The return was submitted for processing and a computer-generated letter was mailed to the taxpayer. The letter advised the taxpayer that his refund was denied because the time to claim the refund had expired.

The taxpayer, through his accountant, objected to the denial of his refund. A deficiency notice was mailed to the taxpayer to allow him an opportunity to appeal the Tax Commission's decision to deny the refund. The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3035(e) limits the time for an employee to claim a credit or refund of monies that have been deducted from wages as follows:

Idaho Code § 63-3035 . . .(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this act, the state tax commission shall, after examining the annual return filed by the employee in accordance with this act, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be made to an employee who fails to file his return, as required under this act, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited.** In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)

Idaho Code 63-3072(c) provides for a limit on the time to claim a refund of overpaid income taxes:

Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid **shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed.** (Emphasis added.)

The period of limitation with respect to claiming a refund or credit of taxes shown in the taxpayer's Idaho income tax return for 1996 expired on April 15, 2000. The taxpayer did not file a claim for refund until April 26, 2002.

In his e-mail protesting the deficiency notice, the taxpayer's representative said that the return was filed timely. He said the signed copies the Tax Commission received on April 26, 2002, should be treated as timely filed returns. He said: "We know that there have been several errors at the Tax Commission and the fact they were not on the computer system as filed does not necessarily mean the returns were not filed timely by the taxpayer." He did not explain why the taxpayer did not contact the Tax Commission when he did not receive his \$491 refund that year.

The Tax Commission has little choice but to accept existing records. The Tax Commission has no record of receiving the taxpayer's 1996 Idaho return prior to April 26, 2002. It is unfortunate the taxpayer did not realize his 1996 Idaho return had not been filed and the refund shown therein claimed until the Tax Discovery Bureau contacted him. However, Idaho Code § 63-3072 is clear and unequivocal. The language in this section "shall be made. . ." is not discretionary, but rather, it is mandatory.

The Tax Commission finds Idaho Code § 63-3072(c) and § 63-3035(e), cited above, are controlling with respect to the taxpayer's refund claim for tax year 1996. The withholding will be allowed to offset the tax due for 1996. However, no credit or refund will be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated November 4, 2002, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this _____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
