

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17031
[Redacted])	
)	DECISION
Petitioners.)	
_____)	

On November 5, 2001, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted], (taxpayers) for refund of individual income tax in the amount of \$91 for the period ending December 31, 1997. The taxpayers filed a timely protest and petition for redetermination of the refund denial. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On June 25, 2002, the taxpayers submitted an amended 1997 Idaho individual income tax return to the Tax Commission for processing. Because the time for claiming the \$91 refund shown in the return had expired, a letter was mailed to the taxpayers advising them of the Tax Commission's intent to deny the refund. The taxpayers objected and a Notice of Deficiency Determination was issued wherein the taxpayers were advised that the refund was denied and they had a right to appeal the determination.

In her letter of protest, [Redacted] explained that the taxpayers' accountant had failed to claim an exemption and other credits for the taxpayers' minor child. She said [Redacted] they contacted their accountant and asked him to prepare [Redacted] amended returns. She said [Redacted] told them their return could be amended within five years. She said:

If the Idaho State Tax Commission [Redacted] have the right to collect on taxes 5 years back, then we as private citizens and tax payers who financially support the Idaho State Tax commission and the wages of all who are employed there should also have the right to

collect on taxes that we over paid due to an error by a tax representative.

Idaho Code § 63-3068 states in pertinent part:

Period of limitations for issuing a notice of deficiency and collection of tax. (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter **shall be issued** within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later. (Emphasis added.)

The Tax Commission is allowed three years in which to notify a taxpayer of additional Idaho income taxes unless an original return has not been filed. There is no limitation if no return has been filed.

Idaho Code § 63-3072(c) provides for a limit on the time allowed to claim a refund:

63-3072. Credits and refunds. . . .

(c) 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. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions. (Emphasis added.)

Idaho Code § 63-3024A(g) defines the time allowed to apply for refund:

63-3024A. Credits and refunds. . . .

(g) An application for **any** refund which is due and payable under the provisions of this section **must be filed** with the state tax commission within three (3) years of:

- (i) the due date, including extensions, of the return required under section 63-3030, Idaho Code, if the applicant is required to file a return, or
- (ii) the 15th day of April of the year following the year to which the application relates if the applicant is not required to file a return. (Emphasis added.)

Idaho Code provides a taxpayer the same number of years to claim a refund or credit as allowed for the Tax Commission to claim a tax deficiency.

[Redacted] questioned the amount of refund the taxpayers were being denied. She said the taxpayers paid \$541 plus penalty and interest as late fees and now the amended return shows they should have received a refund in the first place. She said they are entitled to a refund of the \$541 they paid with the original return and the \$91 showing in the amended return.

[Redacted] is mistaken about the amount of refund the taxpayers would have received if the child had been correctly shown as a dependent in the original return. The original return filed by the taxpayers showed a tax due, after the grocery credit and withholding, of \$541. The amended return showed a tax due, after the grocery credits and withholding, of \$450. The \$91 is the difference between what was due prior to the adjustments and what was due after the correction to allow an additional dependent.

In her letter, [Redacted] said the error in not claiming the dependent in the original return was “due to an error by a tax representative.” The taxpayers hired their tax preparer as their agent to prepare the tax return on their behalf. The taxpayers signed the return declaring the return to be “true, correct and complete.” The taxpayers could have a cause of action against the preparer; however, the responsibility for the accuracy of the return is theirs.

The period of limitation with respect to claiming a refund or credit of taxes shown in the taxpayers’ amended Idaho income tax return for 1997 expired on April 15, 2001. The Tax Commission did not receive the taxpayers’ amended return until June 25, 2002.

The Tax Commission finds Idaho Code § 63-3072(c) and § 63-3024A(g), cited above, are controlling. The clear statutory language prohibits credit or refund of taxes if the claim is not made within a certain timeframe. No credit or refund will be issued.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated November 5, 2002, that denies the taxpayers a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of taxpayers' 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] _____