

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17340
[Redacted],)	
)	DECISION
Petitioner.)	
)	

On May 19, 2003, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for a refund of Idaho individual income taxes of \$378 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 1993 through 1996 Idaho income tax returns had been filed, the Tax Commission contacted the taxpayer. At the time of the contact in 1999, the taxpayer was incarcerated. Subsequent to the taxpayer's release on August 31, 2001, through cooperation with his employer and the Tax Commission, the taxpayer had returns prepared and filed.

The taxpayer's 1996 return was submitted for processing along with the returns for the other years. Because the 1996 return reflected a refund that was beyond the time allowed to claim a refund, a computer-generated letter denying the refund was mailed to the taxpayer.

The taxpayer 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 withhold 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 February 4, 2003.

In his letter of protest, the taxpayer explained that he could not file his tax returns until he was released from [Redacted] State Correctional Facility because he did not have his W-2s and could not locate them until he was released. He included a copy of a fully executed Power of Attorney to allow the Tax Commission to communicate directly with his tax preparer. However, contacting the tax preparer does not change the facts or the law. 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 is allowed to offset the tax due for 1996. However, no credit or refund is allowed.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated May 19, 2003, 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]

[Redacted]

[Redacted]

[Redacted] _____