

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 17395
[Redacted], )	)	
	)	DECISION
Petitioners.	)	
_____	)	

On June 5, 2003, the Revenue Operations Division (Rev Op) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for refund of Idaho individual income taxes of \$1,425 for the period ending December 31, 1998.

The taxpayers filed a timely protest and petition for redetermination of the refund denial. They 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 taxpayers' 1998 through 2000 Idaho income tax returns had been filed, the Rev Op sent the taxpayers a Notice of Deficiency Determination (NODD). The taxpayers responded by submitting their missing returns for filing.

The taxpayers' 1998 return was forwarded to processing along with the other two returns. Because the 1998 return reflected a refund that appeared to be beyond the time allowed for claiming a refund, a computer-generated letter denying the refund was mailed to the taxpayers.

The taxpayers objected and a NODD was mailed to the taxpayers allowing them the opportunity to appeal the decision to withhold the refund. The taxpayers' file was then transferred to the Legal/Tax Policy Division for administrative review.

In the taxpayers' protest letter, they quote Idaho Code § 63-3072 that states for tax year 1998:

**63-3072. Credits and refunds.** (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(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.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (c) and (g) of this section, only

those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the period of limitations prescribed in subsection (c) of this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carryback.

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

(h) The expiration of the period of limitations as provided in this section shall be suspended for the time period during which the taxpayer is prohibited from claiming a credit or refund of tax, penalties or interest imposed under the provisions of this chapter, and for thirty (30) days thereafter.

(i) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

- (j) For purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

The taxpayers emphasized the reference under (j) (the taxpayers referred to it as section (k); they must have quoted from a version other than 1998) that referred to a NODD being considered a return. They pointed out that the NODD was canceled when the returns were submitted rendering the reference to the NODD as a return meaningless.

In addition, the taxpayers asked Rev Op to pay particular attention to section (b) (again it would appear the taxpayers looked at a version of the code other than 1998 because the quote is from subsection (c) of the 1998 code) emphasizing the word "later" when describing the starting date for the three years allowed in which to claim a credit or refund. However, the taxpayers overlooked a very important part of subsection (c).

Subsection (c) begins with, "Except as provided in subsection 63-3035, Idaho Code."

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.)

The period of limitation with respect to claiming a refund or credit of the withheld income taxes shown in the taxpayers' 1998 Idaho income tax return expired on April 15, 2002. The taxpayers did not file a claim for refund of that withholding until March 7, 2003, when they filed their 1998 Idaho individual income tax return.

Idaho Code § 63-3035(e) is clear and unequivocal. The language in this section "No credit or refund 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 taxpayers' refund claim for tax year 1998. No credit or refund can be allowed.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated June 5, 2003, 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]

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