

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

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|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 17416 |
| [REDACTED], |) | |
| |) | DECISION |
| Petitioners. |) | |
| _____ |) | |

On June 13, 2003, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for refund of Idaho individual income tax of \$534 for the period ending December 31, 1999.

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' 1999 Idaho income tax return had been filed, the Tax Discovery Bureau contacted the taxpayers by letter dated March 25, 2003. The taxpayers responded by providing a return with what appeared to be the original signatures of both taxpayers and their preparer. The return, dated April 23, 2003, reflected a refund due to the taxpayers. The return was submitted for processing and a computer-generated letter was mailed to the taxpayers. The letter advised the taxpayers that their refund was denied because the time to claim the refund had expired.

The taxpayers objected to the denial of their refund. A deficiency notice was mailed to the taxpayers to allow them an opportunity to appeal the Tax Commission's decision to withhold the refund. The taxpayers' 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 or credit 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 taxpayers' Idaho income tax return for 1999 expired on April 15, 2003. The taxpayers did not file a claim for refund until April 23, 2003.

The taxpayers said in their letter protesting the deficiency notice that the return was filed timely. [Redacted] said the signed returns (state [Redacted]) were copies of the originals that they signed, dated, and sent to the Tax Commission. She said the return the Tax Commission received on April 23, 2003, should be treated as a timely filed return. [Redacted] She said the taxpayers do not think they should be penalized because the Tax Commission did not receive the return when it was mailed on time. She did not explain why the taxpayers did not contact the Tax Commission when they did not receive their \$534 refund after the return was sent in 2000.

The Tax Commission has little choice but to accept existing records. The Tax Commission has no record of receiving the taxpayers' 1999 Idaho return prior to April 23, 2003. It is unfortunate the taxpayers did not realize their 1999 Idaho return had not been filed and the refund shown therein claimed until the Tax Discovery Bureau contacted them. 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 taxpayers' refund claim for tax year 1999. The withholding will be allowed to offset the tax due for 1999. However, no credit or refund will be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated June 13, 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]
